

1 normally have taken a side in any of the races that
2 are on the ballot, we don't let them become part of
3 the Canvassing Board.

4 So we have a very clean Canvassing Board.

5 We take a look at this and we compare the
6 signature on the provisional ballot envelope that they
7 filled out at the polls to the signature that they
8 have on their Voter Registration status that we have
9 at the office and they're scanned in.

10 And if the scan at the office is a little
11 fuzzy for some reason, because the quality of the
12 scanner, the day in 1984 when it was scanned in, then
13 we go back when.

14 And we have the paper record because we
15 still have everybody's paper Voter Registration. We
16 look at that and we compare the signatures.

17 And if they match, the voter doesn't have
18 to do anything. And we let the voter know whether or
19 not it was a match or it wasn't a match.

20 The voter leaves the voting both this
21 little receipt. It says call our office. Here's the
22 process we go through.

23 It's a system that gives our voters a
24 sense of confidence that everything is going to be
25 fine have that there's a system in place.



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1 And so this process for folks that don't
2 have their driver's license, for instance, and might I
3 add, that of our voters, we used -- more than
4 95 percent of our voters used uses a driver's license
5 when they go to the polls because that's, you know,
6 one of the required forms of ID.

7 Everybody has a driver's license or a
8 Florida ID, if not, then there's other forms of ID
9 that they can use, as well.

10 But with more than 95 percent of our folks
11 using a driver's license, we also find that it's for
12 the poll workers easier to train. Because 95 percent
13 of your customers -- and I say to our poll workers --
14 explain that running an election, running a voting
15 precinct is a lot like running a restaurant.

16 Our whole goal is to see them, feed them,
17 get them out, so the next person can get in there, go
18 to the voting booth, get out of the parking spot so
19 another voter can get into that very same parking lot
20 spot.

21 If our poll workers are looking at the
22 very same form of ID, 95 percent of the time, it's a
23 driver's license, they know exactly where are to look
24 for the signature have they know exactly where to look
25 for the expiration date. They know exactly where to



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1 look for the photo of the voter. So they can see.
2 Okay, it's easy, it's quick, it's simple. It's almost
3 route by that point.

4 But, again, if the voter forgets their ID
5 on election day, which happens, it happens a lot, if a
6 voter forgets their ID on election day, they simply
7 fill out this, they don't have to call our office.
8 They can if they choose to.

9 They can then come into our office on the
10 next day and say, by the way, here's a photo copy of
11 my driver's license. I'm sorry. I didn't have it,
12 and the Canvassing Board makes the decision. And the
13 Canvassing Board, interesting about this, a Canvassing
14 Board makes the decision at a public meeting that's
15 open to the public.

16 And you all are all elected officials, you
17 know this. Every single time there's an elected
18 official election, at least, 50 percent of the
19 candidates lose. Those 50 percent that lose usually
20 don't want to always blame their own campaign.

21 So we'll have folks come into our can
22 advancing boards meetings where these determinations
23 are made. In fact, the determination being made at a
24 Canvassing Board meeting at the eligibility of this
25 voter is seen by more folks that have a vested



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1 interest in the process of losing candidates.

2 It would be made if it were just done at
3 the polls where a poll worker says, no, I don't think
4 so. Go home. You can't vote.

5 So it's a great process. It's fail safe.
6 It makes our candidates feel better. It makes our
7 voters feel a whole lot better, and it's a more secure
8 process, I believe.

9 And I'll go ahead and shut my trap.

10 CHAIRMAN TODD SMITH: Okay. I want to
11 just nail some things down and be as clear as we can.

12 Florida currently requires a photo ID to
13 vote if you don't, you do this particular ballot?

14 MICHAEL ERTEL: Exactly.

15 CHAIRMAN TODD SMITH: Okay. In other
16 words, it's a more onerous or more progressive, if you
17 heard the testimony of the earlier gentleman, form of
18 identification than what is proposed by the Texas
19 Senate in that they can allow either a photo or two
20 non photos?

21 MICHAEL ERTEL: I read the Senate Bill at
22 length. And there are more options for different
23 various styles, like, you know, concealed weapons
24 permit, things like that that we do not have in
25 Florida.



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1 After this legislative session, I believe
2 we'll be down to like five forms of ID.

3 CHAIRMAN TODD SMITH: You can't cast a
4 non-provisional ballot in Florida unless you have a
5 photo ID?

6 MICHAEL ERTEL: You got it.

7 CHAIRMAN TODD SMITH: Okay. In Texas?
8 Provisional would allow you to cast a regular ballot
9 without a photo ID in Texas; is that correct?

10 MICHAEL ERTEL: Yes, as I read your bill
11 and if it goes through, then yes. The Senate Bill,
12 pardon me. That's right.

13 CHAIRMAN TODD SMITH: Okay. Do you know,
14 since you have had a requirement that the voters have
15 a photo identification, how many provisional ballots
16 have been cast statewide as a percentage of total
17 ballots casts? Do you have any information?

18 MICHAEL ERTEL: Well, I can tell you about
19 our county. In our counties this past year, we had
20 during the presidential elections, where we -- we have
21 400,000 folks in our county. We have 264,000
22 registered voters.

23 CHAIRMAN TODD SMITH: 264?

24 MICHAEL ERTEL: Well, 264,366, well, give
25 or take one.



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1 CHAIRMAN TODD SMITH: Okay.

2 MICHAEL ERTEL: So that many. And we had
3 well over 200,000 folks actually go to the polls. We
4 had a 798 percent turn-out in Seminole County.

5 Of that, we had 244 folks that came -- I'm
6 sorry, 740 folks came to the polls and had to fill out
7 a provisional ballot.

8 CHAIRMAN TODD SMITH: Because they didn't
9 have the proper identification?

10 MICHAEL ERTEL: Not only because they
11 didn't have the proper identification. For a myriad
12 of reasons. Most of the reasons, more than 500 of
13 those folks that didn't have it were because they
14 weren't registered voters.

15 This past election was an election --

16 CHAIRMAN TODD SMITH: Well, you don't have
17 any availability to know how many of that 740 people
18 were cast canning a ballot because they didn't have
19 the proper identification?

20 MICHAEL ERTEL: 14.

21 CHAIRMAN TODD SMITH: 14 okay.

22 MICHAEL ERTEL: But most of them were,
23 again, because this is an election where there's a
24 high turn-out because the number of folks that are
25 that are going to turn-out. Not only registration



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1 numbers went up, of course the percentage of voters,
2 also, remained around the same.

3 CHAIRMAN TODD SMITH: 14 out of 200,000
4 voters?

5 MICHAEL ERTEL: Yep.

6 CHAIRMAN TODD SMITH: And at that point in
7 time those ballots go to the signature board or what
8 you call the Canvassing Board?

9 MICHAEL ERTEL: The Canvassing Board.
10 Correct.

11 CHAIRMAN TODD SMITH: Do you know how many
12 of those 14 ballots were counted because of the way
13 you compared signatures?

14 MICHAEL ERTEL: I'm sorry. It was 14 --
15 pardon me if I misspoke. It was 14 that were not
16 counted because of the way we compare signatures.

17 There were a total of -- well, because we
18 only -- if we count them we don't have the number on
19 how many of those that we ended up counting. But most
20 of them we ended up counting, I think was 224, I
21 think.

22 CHAIRMAN TODD SMITH: Okay. 14 does not
23 count because there was no match of a signature.

24 MICHAEL ERTEL: The signatures did not
25 match.



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1 CHAIRMAN TODD SMITH: You don't know of
2 the 740 how many were because they did not have the
3 proper identification?

4 MICHAEL ERTEL: I think -- actually, I do
5 the numbers here. Hold on one second.

6 We had 740 total provisional ballots and
7 of those 227 counted.

8 Of the ones that did not count, 475 of
9 them was because they were not registered in the state
10 of Florida.

11 Three of them not registered within the
12 correct jurisdiction, and 16 of them, because they
13 were showing up at the wrong precinct to vote and they
14 voted where they worked instead of where they lived.

15 And then we had the 14 that were rejected
16 for the purpose of the provisional ballot not
17 mentioned not because of the signature that they had.

18 CHAIRMAN TODD SMITH: My question is: How
19 many people that cast provisional ballots that were
20 counted?

21 MICHAEL ERTEL: 227.

22 CHAIRMAN TODD SMITH: Because their
23 signature matched?

24 MICHAEL ERTEL: Right. 227 for almost all
25 the reasons that we would be, was for lack of taking



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1 your ID to the polls.

2 CHAIRMAN TODD SMITH: Okay. We're still
3 not -- I'm not getting. What I want to do, if you
4 can, is take all the provisional ballots and segregate
5 all the portion that relates to people not having the
6 proper identification, only, whether they counted or
7 not. What number is that?

8 MICHAEL ERTEL: Only because they don't
9 have the proper ID, I can't break that down. We do a
10 report to the EAC and so I've got the numbers here
11 that we break down.

12 227 of them counted. A vast, vast, vast
13 majority of those were because they did not have a
14 proper ID at the polls.

15 And the reason we can say this with
16 certainty is because it was a general election that
17 I'm talking about.

18 In a primary election there will be folks
19 that go to the polls who are perfectly registered
20 voters. Registered as a member of -- they're an
21 independent party or no party affiliation. They want
22 to vote for a primary candidate of their choice. So
23 they fill out a provisional ballot --

24 CHAIRMAN TODD SMITH: So when you say the
25 vast majority of that 227 that counted was because



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1 they did not have the proper ID --

2 MICHAEL ERTEL: Right.

3 CHAIRMAN TODD SMITH: Can you give me your
4 best judgment of that 227 you --

5 MICHAEL ERTEL: I would say well over 85.

6 CHAIRMAN TODD SMITH: 85 percent?

7 MICHAEL ERTEL: Yes. More than
8 85 percent. And I feel very confident with that.

9 CHAIRMAN TODD SMITH: Okay. So if you say
10 85 percent of 227, of that number, 14 didn't count,
11 unlike what we saw in Indiana? A very tiny proportion
12 of the number of votes casts versus the number in
13 Indiana where many of them did not count in order to
14 handle provisional ballots? Is that fair?

15 MICHAEL ERTEL: We're very proud of the
16 way we do it in Florida.

17 CHAIRMAN TODD SMITH: And do you think
18 that what's happening in your county is representative
19 of what happens in counties across the state or does
20 that vary dramatically by county?

21 MICHAEL ERTEL: It does not vary
22 dramatically by county.

23 Now, there will be and this is one of the
24 elements of the provisional ballot thing, is that
25 establishing the poll worker into who receives the



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1 provisional ballot is varying from every single
2 precinct, from precinct to precinct to precinct.

3 CHAIRMAN TODD SMITH: Okay. In terms of
4 the just the --

5 MICHAEL ERTEL: And that's the beauty of
6 the fail safe, in that we received the provisional
7 ballots and we can make -- even if they a voter should
8 not have received a provisional ballot for a
9 particular reason, we're able to then make a more
10 measured decision back at office instead of having our
11 poll workers make a snap decision at the polls.

12 CHAIRMAN TODD SMITH: Is there any
13 controversy in the state of Florida, either from the
14 right or from the left, if the concern from
15 conservative voters that because you simply have to
16 have a signature match and all these votes are counted
17 automatically, that people that are not legally
18 entitled to vote are being able to vote?

19 And is there a concern on the left that,
20 you know, this is still somehow a disenfranchising
21 legal voters? Any controversy in Florida about the
22 signature? The way you handle the signature?

23 MICHAEL ERTEL: No. And I'll tell you,
24 for the State Association of Supervisors, I'm the
25 media guy. I distribute all the media articles that



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1 are out there about elections. I do a little Monday
2 morning thing.

3 And I haven't seen any. And so I'm an
4 avid reader of the process.

5 CHAIRMAN TODD SMITH: And we've got 14
6 people in your county out of the 200,000 that voted.
7 Those are the only ones that can even be argued are
8 potentially legal voters that are not being allowed to
9 vote; is that correct?

10 MICHAEL ERTEL: And it's a lot like the
11 absentee process where if a voter's signature changes
12 from the time that they've initially registered to
13 vote to the time that this ends up in front of us, if
14 that voter's signature changes -- I've been registered
15 to vote since 1988. I'm 39. So my signatures changed
16 quite a bit, you know, especially from 18 to 39.

17 So if the signature is that vary and that
18 wildly different, that could be the cause of it.

19 And that's what we communicate in almost
20 everything we do throughout an election year, and, in
21 fact, it's in our state turn-out study, that at a
22 minimum every general election year, we put an ad in
23 the newspapers, saying, update your signature. Call
24 the Elections Office. Update your signature.

25 CHAIRMAN TODD SMITH: Now, my



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1 understanding of the standard that you use is that it
2 doesn't require the signatures to match. A majority
3 of the Canvassing Board has to conclude that it's not
4 likely the same signature that was on the
5 registration; is that correct?

6 MICHAEL ERTEL: Correct.

7 CHAIRMAN TODD SMITH: So they can take
8 into consideration the age of the person and the
9 difference in the point in time at which they signed
10 the original ballot? It doesn't require a match, does
11 it? They've got to conclude that it's likely not the
12 same person?

13 MICHAEL ERTEL: Right. Correct.

14 Now, I won't let my Canvassing Board of
15 which I'm not a member take inspect to account the age
16 because I think that that is giving one person an
17 additional heads-up that, you know, an additional, you
18 know, push that other folks would not be able to get.

19 So we don't take into account age. We
20 simply look at the signature. Does this signature
21 match?

22 It doesn't have to be a perfect match. I
23 don't have to write Michael Christopher Ertel on Ertel
24 on my Voter Registration Application back in '88 and
25 then now have -- where my signatures just pure chicken



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1 scratch.

2 As long as the "M" matches, for instance,
3 or the "E" matches. We look for things that say, this
4 is the same person. They're signature may have
5 declined over the last several years, but it's
6 obviously the same person.

7 CHAIRMAN TODD SMITH: Okay.

8 Representative Heflin.

9 REPRESENTATIVE HEFLIN: Okay. On the
10 provisional ballots, once you started the process, how
11 do you go about educating the public on the
12 availability of the provisional ballots?

13 MICHAEL ERTEL: Our provisional ballot if
14 there's a voter that has an issue at the polls, it's
15 one of our education on-site things.

16 If there's a voter that has an issue at
17 the polls, we take the voter off to the side. We have
18 one of our poll workers. He's especially trained
19 solely for the purpose of issue voters.

20 By issue voters, I mean voters who have
21 forgotten ID. Voters who walked into the wrong
22 precinct. And we can look them up on the database and
23 say actually you go vote over there. So we educate
24 them on that.

25 REPRESENTATIVE HEFLIN: Okay.



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1 MICHAEL ERTEL: So even if they walk into
2 our polling location without any knowledge of the
3 elections process because they haven't read the paper,
4 they haven't checked the myriad of mail we've given
5 them, we've helped them on-site.

6 And the provisional ballot envelope that
7 we give them has all the information that they need on
8 it, including, so they don't have to read it all
9 on-site, a little take away so they can go home and
10 say. Okay, here's the number. Each ballot envelope
11 has the serial number on it.

12 So it's something that I, as a former
13 communicator, will think about over-communicating
14 beforehand on-site and afterwards.

15 REPRESENTATIVE HEFLIN: And how much
16 training do you give your poll workers? How much time
17 do you allow for each --

18 MICHAEL ERTEL: Our poll workers -- it
19 depends on the job that they have.

20 REPRESENTATIVE HEFLIN: Okay.

21 MICHAEL ERTEL: The most poll workers that
22 you see when you go into the polls on election day are
23 what we in Seminole County call our inspectors.

24 REPRESENTATIVE HEFLIN: Okay.

25 MICHAEL ERTEL: They're the ones that will



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1 walk up, you fill out the information in the book, and
2 they find your name in the book and they help you out
3 that way.

4 We give them 3 hours of training. Per
5 election. So for instance, in this past election
6 cycle, we had a presidential preference primary, and
7 then the general.

8 They were trained for every single
9 election.

10 REPRESENTATIVE HEFLIN: 3 hours?

11 MICHAEL ERTEL: Very repetitive. Very
12 redundant training to make it fun.

13 REPRESENTATIVE HEFLIN: Now, I represent a
14 rural district. My district is actually larger than
15 nine states. So can you imagine. I have a lot of
16 older citizens. Everybody knows everybody.

17 Do you have a provision where if the poll
18 worker signs a Personal Knowledge Affidavit of yes,
19 this is Mrs. Jones and yeah, she forgot her -- is that
20 an ID provision that would work?

21 MICHAEL ERTEL: You know, personal
22 opinion, and I think that you can't have that kind of
23 thing happening. You can't say, and we train our poll
24 workers on this.

25 If your husband comes into the station and



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1 does not have his ID on him, you know --

2 REPRESENTATIVE HEFLIN: It could be a
3 problem?

4 MICHAEL ERTEL: Exactly.

5 REPRESENTATIVE HEFLIN: Okay.

6 MICHAEL ERTEL: So you can't -- because
7 then the person behind him in line who also doesn't
8 have an ID saying, "Okay, I saw that she let him vote
9 but she's not letting me vote because she claims" --

10 REPRESENTATIVE HEFLIN: Yeah.

11 MICHAEL ERTEL: But, I mean, if there's
12 consistency throughout, there's competence throughout.

13 REPRESENTATIVE HEFLIN: Now, versus the
14 person comes into vote and they're Voter Registration
15 says Linda Sally Jones. That's her name. But their
16 driver's license or their identification says Linda
17 Jones Smith or Linda Smith Jones because they got
18 married or whatever.

19 Is that a problem? Are you a stickler?
20 Does everything have to be correct?

21 JUSTIN LEAVITT: No. A voter's lack of
22 ability to update their driver's license name does not
23 disenfranchise them from voting in Florida. What we
24 check on the identification card is we check the photo
25 and we check the signature.



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1 REPRESENTATIVE HEFLIN: Okay.

2 MICHAEL ERTEL: It's a photo and signature
3 ID.

4 REPRESENTATIVE HEFLIN: Okay. Now,
5 earlier the Chairman was asking you questions about
6 Florida having a Voter ID. You were, kind of,
7 hesitant. Were you hesitant -- do you call it a Voter
8 ID or do you have -- what do you call it?

9 MICHAEL ERTEL: Well, each county does it
10 differently. In our county we call it a Voter
11 Information Card and I actually do keep mine on me
12 because I'm an elections guy, of course.

13 REPRESENTATIVE HEFLIN: Oh, it's in your
14 wallet?

15 MICHAEL ERTEL: Yeah, it's in my wallet.
16 It's an Information Card. It's not necessarily to
17 vote. It's simply an Information Card that says
18 here's where your polling location is. Here's who
19 your representatives are. Here's how to get ahold of
20 the Elections Office.

21 REPRESENTATIVE HEFLIN: But all they need
22 to vote is their driver's license or some acceptable
23 form of ID?

24 MICHAEL ERTEL: Right. Driver's license.
25 We also take a combination of various IDs. If you



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1 have, for instance, a credit card with a photo on it,
2 or a student ID with their signature on it, we can
3 combine those two, mix up and make --

4 REPRESENTATIVE HEFLIN: Okay. So you can
5 combine a non-photo ID with like a water bill with a
6 photo ID with the same address?

7 MICHAEL ERTEL: Not a water bill. An
8 actual ID of some form.

9 REPRESENTATIVE HEFLIN: An official ID of
10 some form?

11 MICHAEL ERTEL: Exactly.

12 REPRESENTATIVE HEFLIN: Are they
13 governmental entities or --

14 MICHAEL ERTEL: Not only governmental
15 entities. It's narrowing. It's military ID. It's
16 credit card. Student ID. Things like that.

17 REPRESENTATIVE HEFLIN: Thank you very
18 much.

19 MICHAEL ERTEL: Thank you.

20 CHAIRMAN TODD SMITH: Okay.

21 Members, any other questions?

22 REPRESENTATIVE BROWN: I do.

23 CHAIRMAN TODD SMITH: Okay.

24 Representative Brown.

25 REPRESENTATIVE BROWN: Florida is, kind



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1 of, known as a place where a lot of people go to
2 retire. Does your population show a significantly
3 more older people?

4 MICHAEL ERTEL: Well, each area is
5 different. Seminole County --

6 REPRESENTATIVE BROWN: Statewide?

7 MICHAEL ERTEL: Statewide, we're older
8 than most states, yeah.

9 REPRESENTATIVE BROWN: So if your
10 requirements for voting were going to affect your
11 population, you would be able to see it pretty
12 quickly, wouldn't you? Just because you have a lot of
13 older people?

14 MICHAEL ERTEL: Yeah. Yes. We'd be able
15 to see if a process that we were doing was creating a
16 burden on our voters because they call us, as you well
17 know, as an elected official, they call us and they
18 tell us.

19 REPRESENTATIVE BROWN: I'm sure.

20 Do you allow those in nursing homes to
21 vote from their nursing homes and not go through this
22 process?

23 MICHAEL ERTEL: We do. We have a process
24 where we go into the nursing homes ahead of time and
25 we give them the opportunity to do -- it's really more



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1 of an absentee-ballot process that we then supervise
2 on-site at the nursing homes.

3 REPRESENTATIVE BROWN: And do they have to
4 also present photo ID?

5 JUSTIN LEAVITT: It's an
6 absentee-balloting process.

7 REPRESENTATIVE BROWN: Very good.
8 When did you go to this system? What
9 year?

10 MICHAEL ERTEL: The provisional ballot --
11 this has been in place since I got here, and I got
12 here in February of 2005. It was put in place, as you
13 heard earlier, as part of the HAVA Requirements. So
14 it's a system that since we've had it, has worked
15 tremendously.

16 REPRESENTATIVE BROWN: But HAVA didn't
17 prescribe all, exactly how this was to be, did they?
18 I mean, you did have to pay --

19 MICHAEL ERTEL: Yeah, each state is a
20 little different. Each county is a little different.

21 REPRESENTATIVE BROWN: So this is not
22 statewide? This is your county?

23 MICHAEL ERTEL: No. This is statewide.

24 REPRESENTATIVE BROWN: Okay.

25 MICHAEL ERTEL: The forms are statewide.



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1 The voters have a certain number of days to come in
2 and if they want to, provide us additional evidence.
3 But they don't have to.

4 And so it's a much more, on the voters
5 sense, it's a much more passive activity. If they
6 truly are that person and they know that their
7 signature probably hasn't changed a whole lot, all
8 they're simply doing is taking a little longer are to
9 vote because they have to fill out the thing to make
10 sure that we can verify that they are eligible to cast
11 that ballot in that precinct.

12 REPRESENTATIVE BROWN: Do you have any
13 figures about the cost to implement that system?

14 MICHAEL ERTEL: I know this is in your
15 body that approves the budget -- it's not that much.
16 But no matter what it is, the security of the
17 election, it's worth it, it's worth the extra time to
18 train the poll workers. It's worth the extra little
19 bit of money.

20 It's really just printing. It's printing
21 these envelopes. Our Canvassing Board, it takes us --
22 it's one of the longest things we do is going through,
23 the things that takes the longest amount of time.

24 But if we're going to wine whine about
25 taking longer time, we shouldn't be in the election.



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1 REPRESENTATIVE BROWN: And how many days
2 do you have?

3 JUSTIN LEAVITT: To verify those?

4 MICHAEL ERTEL: Well, the voter has until
5 two days after the election to come in and give us
6 additional information. Again, because they don't
7 have to, to do that.

8 We have very, very, very few voters that
9 actually do come back and present us with the
10 additional information.

11 REPRESENTATIVE BROWN: But you're an
12 elected official. How long do they have to get those
13 all? To go through them and verify?

14 MICHAEL ERTEL: We do it within two days.

15 REPRESENTATIVE BROWN: Two days?

16 MICHAEL ERTEL: Yeah.

17 REPRESENTATIVE BROWN: I'm impressed.

18 MICHAEL ERTEL: Well, like you're having
19 tonight. It just takes late nights but it's one of
20 those, kind of, important things.

21 REPRESENTATIVE BROWN: Thank you.

22 JUSTIN LEAVITT: Thank you.

23 CHAIRMAN TODD SMITH: Any other questions?

24 Yes. Representative Heflin.

25 REPRESENTATIVE HEFLIN: On your Voter



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1 Registration process, like for your at your senior
2 citizens centers -- do you all go out there and
3 actually go on-site to help those senior citizens?

4 MICHAEL ERTEL: We do. Well, we go
5 everywhere. I mean, I tell our voter outreach staff,
6 if it's more than 50 people there, we'd better be
7 there.

8 REPRESENTATIVE HEFLIN: Good.

9 MICHAEL ERTEL: At an event or at
10 anything.

11 REPRESENTATIVE HEFLIN: You wanna move to
12 Texas?

13 MICHAEL ERTEL: What's that?

14 REPRESENTATIVE HEFLIN: You wanna move to
15 Texas?

16 MICHAEL ERTEL: I love Florida.
17 So, you know, we just try go out and go
18 everywhere. To schools. To events. To everything.

19 REPRESENTATIVE HEFLIN: Okay. Now, you've
20 read the bill that's before the committee today?

21 MICHAEL ERTEL: Yeah.

22 REPRESENTATIVE HEFLIN: Is there anything
23 in this bill at all that addresses the provisional
24 ballot issue?

25 MICHAEL ERTEL: You've discussed



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1 provisional ballots. Hold on. Let me find out the
2 exact point on it where it talks about it.

3 It talks about it in line -- in --
4 everyone's got different kind of copies, but in my
5 page it's Section 66 --

6 REPRESENTATIVE HEFLIN: What page?

7 MICHAEL ERTEL: Well, on my page -- it's 3
8 and it goes down to Line 26, that the requirements for
9 identification at subsection are not met the voter may
10 be accepted for provisional ballot voting under
11 Section 63 dot 01, shall inform the voter who has not
12 accepted to voting under this section of the voter's
13 right to cast a provisional ballot.

14 REPRESENTATIVE HEFLIN: Now having read
15 that, I like your position, so you think it would be
16 good to change this bill to the way you're doing it?

17 MICHAEL ERTEL: I think that's your
18 decision to make. I think there's laws and there's
19 rules which implement the laws.

20 REPRESENTATIVE HEFLIN: Yeah.

21 MICHAEL ERTEL: And you can put every
22 element of a rule into a law if you'd like or you can
23 let that come under the rules process.

24 REPRESENTATIVE HEFLIN: Thank you very
25 much for your testimony.



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1 MICHAEL ERTEL: Thank you.

2 CHAIRMAN TODD SMITH: Okay. Members, any
3 other questions for this witness? Anybody?

4 MICHAEL ERTEL: I've given everyone a copy
5 of one of these so you all can have them.

6 CHAIRMAN TODD SMITH: Okay. Good. Thank
7 you very much.

8 MICHAEL ERTEL: Including a sample ballot.

9 CHAIRMAN TODD SMITH: Do you have any
10 other material that you have that, sort of, generally
11 describes in summary manner how you handle the Florida
12 provisional ballots? I would be interested in --

13 MICHAEL ERTEL: I have a copy of it and I
14 didn't make 15 copies of it. But I do have a copy of
15 the relevant law and I can pass it out. Okay. The
16 copy of the law describing the process that we go
17 through, as well as the canvassing of it.

18 CHAIRMAN TODD SMITH: All right. Thank
19 you.

20 MICHAEL ERTEL: Great.

21 CHAIRMAN TODD SMITH: Representative
22 Anchia.

23 REPRESENTATIVE ANCHIA: Yes, just very
24 quickly before you go.

25 MICHAEL ERTEL: You're like Columbo. Just



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1 one more thing.

2 REPRESENTATIVE ANCHIA: Just one more
3 thing. I hadn't had a chance to ask you a question
4 yet.

5 MICHAEL ERTEL: All right.

6 REPRESENTATIVE ANCHIA: I've been engaged
7 on procedure.

8 MICHAEL ERTEL: I was actually hoping I
9 would be able to get away without you asking one of
10 your questions.

11 REPRESENTATIVE ANCHIA: No. Honestly.

12 MICHAEL ERTEL: I'm waiting for it,
13 though.

14 REPRESENTATIVE ANCHIA: In terms of -- and
15 this, I think, was asked and you may have answered it.
16 I just want to make sure we get it on the record and I
17 understand it.

18 When you instituted the photo ID standard,
19 what parallel procedures did you put in place to
20 increase access to the franchise?

21 MICHAEL ERTEL: Ask it again.

22 REPRESENTATIVE ANCHIA: Carter-Baker talks
23 about increasing security at the same time increasing
24 ballot access, right?

25 MICHAEL ERTEL: Okay.



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1 REPRESENTATIVE ANCHIA: What did Florida
2 do in those parallel tracts or did you just do it
3 piecemeal by putting in photo ID?

4 MICHAEL ERTEL: We've had photo ID since
5 I've been there: Is I can't really --

6 REPRESENTATIVE ANCHIA: How long is that?

7 MICHAEL ERTEL: February of '05.

8 REPRESENTATIVE ANCHIA: Okay.

9 MICHAEL ERTEL: So I can't really attest
10 to the implementation process they did. But since --
11 and if it were before -- if it were far, far before
12 2000, since 2000 we've had so many changes in the
13 process.

14 REPRESENTATIVE ANCHIA: Right.

15 MICHAEL ERTEL: Because there's so many
16 changes because we were under a microscope.

17 REPRESENTATIVE ANCHIA: HAVA?

18 MICHAEL ERTEL: HAVA. Florida.

19 And so we've had a large turnover in the
20 election official community, as well, since 2000.

21 REPRESENTATIVE ANCHIA: Okay. How much
22 did the move to photo ID cost the state? And I'm
23 going to talk about three buckets of money.

24 The first with one is access to ID. What
25 did you all do and how much did you spend in order to



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1 get people access to the ID?

2 Poll-worker training in the second bucket
3 of money.

4 And then third: Did you have a
5 corresponding change on mail-in ballots? You are a no
6 excuse mail-in ballot state, correct?

7 JUSTIN LEAVITT: Correct.

8 MICHAEL ERTEL: Correct. Correct. In
9 fact, we encourage absentee voting.

10 JUSTIN LEAVITT: Okay.

11 MICHAEL ERTEL: I can't talk about the
12 implementation budget because I was not there during
13 the implementation so I don't want to talk outside
14 that.

15 But within the training, because more than
16 95 percent of our voters use a driver's license,
17 within the training, it actually makes our training
18 expendientially easier.

19 We don't have to train, here's how to look
20 for all these various forms of ID. We train here's
21 where to look on the driver's license for the photo.
22 Here's where to look for the signature. So as our
23 training -- you know, 95 percent of our voters come in
24 with the same form of ID. The form that our poll
25 workers are very familiar with.



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1 And as I mentioned it becomes rogue for
2 our poll workers. They're able to come in. They know
3 exactly where to look. It processes the voters
4 quicker, more likely, pardon me.

5 And so it in training, it's yes to train
6 our poll workers. In practice, our poll workers get
7 it quicker, and in the implementation at the polls,
8 our voters go through the process much quicker
9 because they're not pulling out the same statement and
10 stuff like that.

11 REPRESENTATIVE ANCHIA: There are only
12 five forms that you allow and the changes go through
13 this legislative session that you anticipate it?

14 MICHAEL ERTEL: I think we're going to be
15 down to like five.

16 REPRESENTATIVE ANCHIA: Right.

17 MICHAEL ERTEL: And as a caveat to that,
18 if you have no driver's license or Florida ID or
19 passport or any of that stuff, that's why we have the
20 provisional ballot process so that voters without ID,
21 voters who would.

22 It's burdensome for them to, as Dr. Alan
23 was mentioning, to take the drive down to the Driver's
24 License Bureau or take a walk down to the Driver's
25 License Bureau until you get your license or to get an



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1 ID card of some sort -- even if you don't have an ID,
2 you can vote.

3 You vote provisional and that's how we
4 verify you. And it's a much more deliberate process
5 and allows our voters to -- it allows us to determine
6 the eligibility of the voters and we can take our time
7 on it and do it right.

8 REPRESENTATIVE ANCHIA: Can you speak to
9 the policy decision of expanding absentee voting to
10 no-excuse and whether there was any thought to mail-in
11 ballot fraud during the expansion of absentee.

12 MICHAEL ERTEL: I can't speak for
13 legislature and what caused them to do what they did.
14 I can speak to the implementation of it and how we
15 make sure that the fraud is kept to a minimum.

16 REPRESENTATIVE ANCHIA: And how did you do
17 that?

18 MICHAEL ERTEL: If people know that
19 there's a stick, they're not going to do it.

20 REPRESENTATIVE ANCHIA: What is a stick?
21 It's an enforcement stick?

22 MICHAEL ERTEL: You got it. You got it.
23 So if they know that I'm going to get --
24 you know, there is a consequence, then they're less
25 likely to do it.



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1 And you know, I told one person because we
2 had folks, as we all know within the absentee fraud
3 stuff, you can cast that ballot, but it will be the
4 last one for awhile because we're going to catch you.

5 I'm a former military guy and we catch
6 them and we make sure that they know that it's not
7 something that is acceptable. Expert Anchia, I know
8 Miami had elections that were overturned long ago
9 because of mail-in ballot fraud.

10 What are some of the safeguards that you
11 have in your mail-in ballot system other than the
12 stick that you have over here, saying, hey, penalty,
13 big penalty? Look out, we're going to catch you.

14 Are there systematic safeguards you have
15 in place?

16 MICHAEL ERTEL: There are. Each county
17 has our own security procedures on how we ensure that
18 absentee-ballots aren't going in a fraudulent way.

19 One thing that we do, and I can tell you
20 that we do have a list that I ask of our folks. And
21 every single household that has requested more than
22 four absentee-ballots, I track.

23 So that I can say, Okay, wait a minute.
24 How big is this House? How many absentee-ballots have
25 been requested? If there's 27 absentee-ballots



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1 requested from a one-bedroom apartment, something's
2 been benchmarked. So we check that.

3 And so we look up front to make sure that
4 if we see anything that may occur, then we go ahead
5 and just, sort of, do a little looksey to make sure.
6 It's like watching a drunk guy walk out of the bar.
7 Do you let him turn on the car and enforce it or do
8 you say you probably shouldn't be driving tonight?

9 REPRESENTATIVE ANCHIA: Okay. Thank you.

10 MICHAEL ERTEL: Okay.

11 CHAIRMAN TODD SMITH: Any other questions?
12 I have a few questions unless someone else has
13 questions. Anybody else have questions? Anybody?

14 Do you have access -- I assume if you have
15 identified there were 14 votes in your counsel it I
16 that were not counted because of the photo ID
17 requirements, can you get me information in writing
18 after this hearing if possible to get me those numbers
19 on a statewide basis?

20 And my question is: In your county --

21 MICHAEL ERTEL: Statewide we had 394.

22 CHAIRMAN TODD SMITH: Okay. And I assume
23 -- those -- 394 were the votes that were be counted
24 because of the photo identification requirements.

25 MICHAEL ERTEL: They did not have the



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1 identification and the signatures to match.

2 CHAIRMAN TODD SMITH: And that's how many
3 votes were cast statewide? Do you have that?

4 MICHAEL ERTEL: Oh, my goodness.

5 CHAIRMAN TODD SMITH: Do you have that?

6 JUSTIN LEAVITT: Item, yeah, I do have
7 that number. Hold on one second.

8 I know we had 38 plus, 3.8 million, plus
9 -- roughly 2 million -- so that many.

10 CHAIRMAN TODD SMITH: Say that again.

11 MICHAEL ERTEL: 3,893,184 were cast on
12 election day. 2,661,672 were cast at early voting
13 sites.

14 And 1,947,080 were cast via absentee.

15 CHAIRMAN TODD SMITH: So somewhere around
16 8 million votes and 394.

17 MICHAEL ERTEL: Uh-huh.

18 CHAIRMAN TODD SMITH: And the population
19 of Florida is 10 million and the population of Texas
20 is 23, 24 million.

21 MICHAEL ERTEL: Actually, we have
22 10.4 million registered voters for this past election.
23 So our registration rate is not as high, of course, as
24 our population rate.

25 CHAIRMAN TODD SMITH: And I have an



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1 indication here that in about 2003, and that's when
2 the Mandatory Photo Identification Requirement was put
3 into place; is that correct?

4 MICHAEL ERTEL: Okay.

5 CHAIRMAN TODD SMITH: And it indicates
6 that the Senate, which at the time was 14 Democrats
7 and 25 Republicans voted 38 to 0 on that bill.

8 And that the House of Representatives,
9 which was 39 Democrats and 81 Republicans voted 111,
10 to 2 on that bill to mandate photo identification
11 requirements.

12 Do you recall that?

13 MICHAEL ERTEL: I mean, if you're reading
14 it and you know it's true, then it is, I'm sure.

15 CHAIRMAN TODD SMITH: Okay. All right.

16 Any other questions, members, of this
17 particular witness?

18 REPRESENTATIVE VEASEY: I have one
19 question.

20 CHAIRMAN TODD SMITH: Okay.

21 REPRESENTATIVE VEASEY: Do you have any
22 demographic information on who the voters are?

23 MICHAEL ERTEL: Is the question: Is one
24 person more likely to forget their ID than another
25 person?



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1 REPRESENTATIVE VEASEY: According to
2 your --

3 MICHAEL ERTEL: The form itself that folks
4 fill out, it's a self-identifying form.

5 On the form there is no demographic
6 information asked for the specific purpose that the
7 decision to count the provisional ballot should not be
8 based on the demographics of the voter. It should be
9 based upon the eligibility of the voter to vote in
10 that precinct on that day.

11 REPRESENTATIVE HEFLIN: Mr. Chairman, he
12 said he was going to provide copies of the procedure,
13 the provisional ballots.

14 Can you ask him, since I don't want to use
15 his time on the clock, but can you do the same on
16 mail-in ballots, the procedures you follow for that?

17 MICHAEL ERTEL: Absolutely.

18 REPRESENTATIVE VEASEY: And so, obviously,
19 you said you don't keep any sort of racial
20 demographics on this. Are any ZIP codes or anything
21 or anything, things like --

22 MICHAEL ERTEL: We do have certain ZIP
23 codes at the precinct. The precinct is much smaller
24 than the zip codes have we only have 126 precincts.

25 The precincts in historic areas where



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1 there's older folks because we've got one area that
2 has a couple of senior citizen areas do not vary in
3 the number of provisional ballots.

4 REPRESENTATIVE VEASEY: Do you have more
5 than a couple in Florida?

6 MICHAEL ERTEL: Not in my county. We
7 don't have that many. We're, kind of, inland. It's
8 not that great of county for seniors to retire to when
9 they can go on the beach.

10 But there's no variance between -- there's
11 no big difference between, you know, our precinct that
12 has one specific definite. Demographic versus a
13 precinct that has a another specific demographic.

14 CHAIRMAN TODD SMITH: Any other questions,
15 members?

16 Representative Anchia.

17 REPRESENTATIVE ANCHIA: One last question.

18 CHAIRMAN TODD SMITH: Okay.

19 REPRESENTATIVE ANCHIA: Do we have time?

20 CHAIRMAN TODD SMITH: You do. The clock
21 says 26 minutes then we can have the discussion.

22 MICHAEL ERTEL: Hopefully I don't take
23 13 minutes to answer your question.

24 REPRESENTATIVE ANCHIA: Great. Great.

25 I know that this doesn't have any



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1 identifier based on or you cannot glean demographic
2 information from this, whether or not they are racial.

3 Have you gone back and studied that
4 universe of voters that have had to vote a provisional
5 ballot because they didn't have the requisite ID and
6 done a retrospective study of that group to determine
7 how many are African Americans? How many are
8 Hispanic? How many are seniors? How many are women?

9 MICHAEL ERTEL: We don't see a spike in
10 one group or another.

11 REPRESENTATIVE ANCHIA: But you have
12 started it?

13 MICHAEL ERTEL: Well, we do know that
14 antidotally.

15 What we don't do is after an election try
16 to determine -- we do determine the voter turn-out
17 among certain communities. Overall voter turn-out.

18 We can look back at ones that counted.
19 Just remember the ones that counted are voters who we
20 have a file on.

21 A lot of times the ones that don't count
22 is because they're not a registered voter. And the
23 information they put down here does not have that
24 information on it. So it doesn't have the demographic
25 information on it.



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1 REPRESENTATIVE ANCHIA: But you have done
2 a study of the voters that counted?

3 MICHAEL ERTEL: Yes, it's easy to do of
4 the ones that counted. And again, there's no it's all
5 one group or it's all one group. Everybody forgets
6 their ID occasionally. And it's -- forgetting your ID
7 is not something that has anything to do with you are
8 age or your race or your gender or anything or your
9 political affiliation.

10 REPRESENTATIVE ANCHIA: Okay. Thanks.

11 CHAIRMAN TODD SMITH: Since this law was
12 implemented in 2003, is there a number of people that
13 are not bringing an ID to the polls and therefore
14 casting a provisional ballot shrinking over time?

15 MICHAEL ERTEL: It depends on an election.
16 If you have an election with a lot of passive
17 voters -- and by passive voters, I mean, folks that
18 aren't -- that don't show up to the polls a whole lot,
19 they're less used to the process and so they may not
20 know that they have to have an ID.

21 So like at this last election we had --
22 there were a lot of voters that were voting for the
23 first time or the first time in a while. And so
24 because of that, they may not have known that they had
25 to have their ID with them.



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1 So first the number would be higher for a
2 general election in a presidential year where there's
3 a lot of expert site on both sides of the aisle.

4 CHAIRMAN TODD SMITH: And so that's the
5 election, that election where there were more people
6 showing up because of the higher turn-out that
7 resulted in the 394 voters statewide?

8 MICHAEL ERTEL: Yeah. It would be a
9 higher turn-out numbers-wise. We had more voters turn
10 out during this election than any other election.

11 Percentage wise, it's about the same, of
12 course.

13 CHAIRMAN TODD SMITH: Okay.

14 Any other questions, member?

15 REPRESENTATIVE ALLEN: One more question.

16 CHAIRMAN TODD SMITH: Dr. Allen.

17 REPRESENTATIVE ALLEN: You have ensured
18 the health provisional ballot.

19 MICHAEL ERTEL: The provision envelope?

20 REPRESENTATIVE ALLEN: Yes.

21 MICHAEL ERTEL: We can make some changes,
22 but a lot of it has to do with, you know, what we have
23 to place on there because of what state law mandates.

24 REPRESENTATIVE ALLEN: I was --

25 MICHAEL ERTEL: Do you have suggestions?



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1 REPRESENTATIVE ALLEN: No. I was just
2 looking at, just above the voter's signature there is
3 there is the stick.

4 MICHAEL ERTEL: And that's mandated by
5 Florida law to have the information within this box.
6 It's verbatim.

7 REPRESENTATIVE ALLEN: Okay. But right
8 above the signature, I guess, you have a reason for
9 putting it there.

10 MICHAEL ERTEL: Right. And mostly for a
11 variety of reasons because we want the voter to know
12 that right before they sign it. Now, there's
13 information below that that they have to fill out.

14 But if they don't fill out all that
15 information, that's, you know, it won't disqualify
16 their vote from being counted if they don't fully fill
17 out this envelope.

18 We can glean enough information from what
19 they've provided us to make an intelligent decision
20 that they're eligible to vote that day in that
21 precinct with that ballot style, then we'll go through
22 and do it.

23 The No. One thing they absolutely need,
24 though, is the signature of the voter on here though.
25 And that's why I believe when the legislature wrote



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1 this language, they probably did it right below there.

2 REPRESENTATIVE ALLEN: Okay. Thank you.

3 CHAIRMAN TODD SMITH: Thank you,
4 Mr. Ertel. I appreciate you taking the time to come.

5 MICHAEL ERTEL: Thank you very much
6 Chairman.

7 CHAIRMAN TODD SMITH: And visit with us.

8 JUSTIN LEAVITT: Thank you.

9 CHAIRMAN TODD SMITH: Thank you.

10 At this time, the chair calls D
11 Charleston, a Walker County Justice of the Peace from
12 Waller, who's here to testify against Senate Bill 362.



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1 STATE OF TEXAS:

2
3 COUNTY OF HARRIS:

4
5 I, Kateri A. Flot-Davis, Certified
6 Shorthand Reporter in and for the State of Texas,
7 hereby certify that the foregoing transcript is done
8 to the best of my ability and reflects proceedings
9 heard on video recording.

10 I further certify that I am neither
11 counsel for, related to, nor employed by any of the
12 parties or attorneys in the action in which this
13 proceeding was taken, and further that I am not
14 financially or otherwise interested in the outcome of
15 the action.

16 Certified to by me this ____ of _____
17 , ____.



21 Kateri A. Flot-Davis

Kateri A. Flot-Davis

Texas CSR No. 8462

22 Expiration Date: 12-31-13
23
24
25



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Hearing

April 6, 2009

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Job No. 330579

VOLUME 2
TEXAS HOUSE OF REPRESENTATIVES
COMMITTEE ON ELECTIONS
April 6, 2009

Transcribed: April 15, 2012



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1 CHAIRMAN SMITH: At this time, the chair
2 calls Dewayne Charleston, a Walker County Justice of Peace
3 who is here to testify against Senate Bill 362.

4 SPEAKER: Mr. Chairman, before we begin I
5 just want to clarify procedure with the committee. I'm
6 looking at the memorandum that was sent to committee
7 members on April 3rd regarding the committee hearings on
8 April 6th and 7th. We just had an exchange before the
9 prior witness related to time limits -- Mr. Leavitt,
10 specifically -- and in the one, two, three, fourth
11 paragraph on the memo it says, "As indicated on the post,
12 testimony at Monday's hearing will be limited to invited
13 guests. A witness list is attached. These witnesses will
14 be allowed to provide an opening presentation of up to 10
15 minutes and then stand before the committee to answer
16 questions.

17 When I read that, I didn't see anything
18 related to 30 minutes of total question time. It's my
19 understanding that you took the total number of witnesses
20 and divided that time by the time that we started and the
21 hours available before midnight and came to the conclusion
22 it would be 30 minutes, but I just wanted to point out for
23 the record that there was nothing in the memorandum that
24 said that there would be 30 minutes.

25 So, when you question my understanding of



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1 the deal, there's some ambiguity as to whether or not 30
2 minutes was the standard or not the standard. It's been
3 past practice on the committee with Chairman Burman that
4 we were able to ask questions -- all of our questions, and
5 I don't -- I don't believe that any member of the
6 committee has asked a question to date, and I think it's
7 important for the Democratic process and also to make the
8 record, to the extent the Frazier bill goes to the justice
9 Department, that we be able to ask our questions.

10 CHAIRMAN SMITH: To respond to that, the
11 memorandum that was circulated expressed my intent as to
12 how we would handle this hearing. I think it expressed it
13 as clearly as a memorandum could before we knew what time
14 the hearing would start because of the fact that we did
15 not have the ability to anticipate what time we would
16 leave the House floor. What the memorandum clearly says
17 is that it is my intention to conclude Monday's hearing no
18 later than midnight. No later than midnight. The reason
19 for my intention to do that was because -- for the
20 convenience of the public and their ability to testify on
21 this question, we have separated the invited testimony
22 from the public testimony and have no way of knowing but
23 reasonably anticipate in light of the significant interest
24 on this particular issue that we could go well into the
25 night listening to public testimony tomorrow night.



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1 And so, for the health of the members on
2 the committee as well as for the convenience of these
3 expert witnesses who have gone to the trouble in some
4 instances of traveling from many other parts of the
5 country, it was my intent to -- to take the time when we
6 started, divide it by the number of witnesses, and
7 distribute that time fairly among the members in terms of
8 their ability to ask questions.

9 I will note that the witness list is 13,
10 seven of which were provided by my friends on the
11 Democratic side of the aisle, six of which were provided
12 by my friends on the Republican side of the aisle. So, my
13 proposal would result in us being here until midnight and
14 would result in 40 more minutes' of testimony from expert
15 witnesses on the Democratic side of this issue than the
16 Republican side of this issue. If -- if anybody believes
17 that that is somehow unfair against those people who are
18 in opposition to Senate Bill 362, then, you know, I
19 suppose that that is a matter of opinion and everybody has
20 one, but I -- I certainly, you know, am open for
21 discussion on the committee to the extent that there are
22 any of my members -- I'm one of the younger members on the
23 committee. I think I can stay up all night two nights in
24 a row, although it's been a long time since I've tried.

25 If it is the desire of the committee to



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1 take the eight remaining witnesses that we have left and
2 the six hours and 15 minutes that we have left and allow
3 members to ask as many questions as they wish for whatever
4 purpose they wish and to ask of these expert witnesses to
5 stay until we are done along with the members of the
6 committee, then I am certainly open to a discussion along
7 those lines.

8 I do think that the proposal to take the
9 seven witnesses that were provided by the Democrats and
10 the six witnesses that were provided by my Republican
11 friends and divide the time up to midnight equally a fair
12 one. More than fair. If for whatever reason that's --

13 SPEAKER: Just two comments, Mr. Chairman.
14 It was expected that the Republicans would have seven
15 witnesses, as well, and one of them dropped out.

16 CHAIRMAN SMITH: But we took that time and
17 divided it equally among the witnesses rather than half
18 the time for the Democrats and half the time for the
19 Republicans.

20 SPEAKER: Let me finish just really
21 quickly. I would just like to finish. The inequity in
22 number of witnesses from Democrats and Republicans is
23 not -- is clearly not the fault of Democrats. We were
24 asked to provide seven. We provided seven. We thought
25 you were going to provide seven. You provided six.



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1 That's clearly not our fault.

2 The other assumption I think is worth
3 exploring is that very few of the witnesses have actually
4 used up all their time. I think one or two.

5 CHAIRMAN SMITH: I think there is one
6 witness that didn't use all his time because he was late
7 for a flight, and I believe I'm correct in saying there
8 was only one witness who didn't use up all their time
9 because of a lack of questions, and that was Ms. --

10 SPEAKER: Did the last witness use all
11 their time?

12 CHAIRMAN SMITH: Yes, she did.

13 SPEAKER: He did?

14 CHAIRMAN SMITH: He did, more than.

15 SPEAKER: One quick comment, Mr. Chairman.

16 CHAIRMAN SMITH: So, you-all let me know.
17 I'm here, and I'm trying to be fair to the witnesses and
18 to the House and members of the committee. If the
19 consensus says that we wish to proceed and let each of
20 these witnesses --

21 SPEAKER: I just want to comment that
22 Ms. Brown and I have sat on several committees together
23 and spent many late nights up here and I would guarantee
24 we've been back here early the next morning before some of
25 these young whipper snappers. We defer to the age



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1 questions.

2 CHAIRMAN SMITH: So, do we have a forum?
3 At this time --

4 SPEAKER: Mr. Chairman, I would say -- I
5 have something I wanted to put into the record, a
6 deposition here from Ken George. Mr. George is a former
7 chairman of the Republican party in Dallas County, and I
8 wanted to give a copy of this one deposition to the
9 committee so it becomes a part of the official record just
10 in case this deal comes under Justice Department review.

11 In this particular deposition, Mr. George
12 is unable to identify any voter fraud in Dallas County,
13 even though he did send a letter at the time to the Dallas
14 County DA asking the DA to investigate voter fraud when
15 Tony (inaudible) was running against Harry Miller back in
16 2006 and -- and, you know, just like many of the witnesses
17 that are here today, that report by Mr. George has not
18 produced any voter fraud even though he said initially
19 that there was.

20 CHAIRMAN SMITH: Thank you. And now
21 it's -- I believe I can welcome and I will go ahead and
22 begin the clock and we'll kind of be loosey-goosey about
23 this to the extent that we can until someone complains
24 about the hour.

25 Mr. Dewayne Charleston, would you please



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1 state your name and who you represent?

2 DEWAYNE CHARLESTON: Yes. My name is
3 Dewayne Charleston. I'm a justice of the peace from
4 Waller County.

5 CHAIRMAN SMITH: And you're here to testify
6 against Senate Bill 362?

7 DEWAYNE CHARLESTON: Yes, I am.

8 CHAIRMAN SMITH: Please proceed.

9 DEWAYNE CHARLESTON: Dewayne Charleston,
10 Waller County. I'm a justice of the peace, and I come to
11 oppose this particular bill. I want to thank you for the
12 opportunity to provide testimony about voting rights in
13 Texas and how they relate to the voter ID bill that you
14 may be now considering. Prior to the 2008 election and
15 for the past 20 years I've been deeply involved in trying
16 to end rationally discriminatory voting practices in
17 Waller County, Texas.

18 I met with officials from the United States
19 Department of Justice and from the Texas Attorney
20 General's office and I had been given the assurances based
21 on detailed information that Prairieview students were
22 being subjected to racially discriminatory voting
23 practices, and I got those assurances that action would be
24 taken. And each time I contacted the Texas Attorney
25 General's office I was told that they were still looking



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1 into it, that there were ongoing investigations.

2 During the 2008 election, especially during
3 the spring primary, students at historically black
4 (inaudible) campus once again encountered significant
5 barriers to becoming registered voters and, again, the
6 Texas Attorney General did very little to help.

7 I then contacted the Campaign Legal Center
8 in Washington, D.C. which agreed to and provided legal
9 counsel to another student at the historically black
10 university who believed that their voter registration
11 application was being rejected for racially discriminatory
12 reasons.

13 Upon investigation, the Campaign Legal
14 Center concluded that the actions of Waller County
15 officials violated the Voting Rights Act of 1965. There
16 had been many previous complaints about the unnecessary
17 obstacles to voter registration being placed on the
18 Prairieview students. It would widely known that the
19 Department of Justice had been investigating these
20 problems for the last few years. They provided the
21 departmental attorneys with updated information on the
22 continuing problems, including the significant hurdles
23 erected in violation of the Voting Rights Act by Waller
24 County officials who were attempting to keep Prairieview
25 students from exercising their right to vote.



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1 In the fall of 2008, the United States
2 Department of Justice signed a lawsuit against Waller
3 County for violations of the Voting Rights Act. The
4 violations concerned various aspects of Waller County's
5 racially discriminatory voter registration process.

6 Specifically, the Justice Department
7 identified several new voter registration procedures that
8 had been implemented by Waller County election officials
9 in violation of Section 5 of the Voting Rights Act, which
10 is known as pre-clearance requirements.

11 These changes in voter registration
12 procedures included numerous barriers that Waller County
13 officials had erected and which were aimed at Prairieview
14 students, particularly those students who had volunteered
15 to serve as deputy voting registrars. These barriers
16 included refusing to accept voter registration
17 applications submitted by voluntary deputy registrars that
18 the registrars have (inaudible), requiring the voluntary
19 deputy registrars to notify each such applicant of the
20 rejection and imposing limitations on the number of voter
21 registration applications -- documents that voluntary
22 deputy registrars could obtain in facilitating voter
23 registration drives.

24 The Department of Justice also alleged that
25 Waller County election officials violated federal law



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1 because in processing voter registration applications
2 county officials rejected applications of Prairieview
3 students for arbitrary reasons that were not authorized by
4 state law, such as failure to include difficult and other
5 hyper-technical reasons.

6 On October 17th, 2008, a consent judgment
7 and decree was agreed upon by the United States Department
8 of Justice and Waller County officials and approved by the
9 federal court. The agreement provided for far-ranging
10 relief for African-American students at Prairieview.
11 Under the settlement agreement, Waller County officials
12 admitted that it had made several changes in its voter
13 registration procedures in violation of the Voting Rights
14 Act. The county also admitted that its rejection of
15 Prairieview's voter registration applications that were
16 inconsistent with Texas law. Under the consent judgment,
17 Waller County agreed to review previously-rejected
18 applications within seven days of the settlement
19 agreement, and county officials were required to notify
20 Prairieview students in sufficient time so that they could
21 cast ballots on election day 2008.

22 Also as part of the settlement, election
23 officials in Waller County agreed to develop by
24 December 1st, 2008, a training program for volunteer
25 deputy registrars, including appropriate written materials



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1 for purposes of improving the training registrars.

2 The consent judgment also required -- put
3 Waller County officials to coordinate with Prairieview
4 officials to hold twice annual events on the Prairieview
5 campus at which students can become voluntary deputy voter
6 registrars and receive training (inaudible).

7 As the Waller County case clearly
8 illustrates, problems in voter registration procedures are
9 not a thing of the past. We can all do what we can to
10 eradicate impediments to registration and voting starting
11 with a clear and acceptable voter registration process.

12 What is most troubling to me is the fact
13 that here we have the State of Texas considering the
14 enactment of a law that requires a photo voter ID in order
15 to vote and why, to solve a problem of in-person voter
16 fraud even though such examples of such voter
17 impersonalization fraud are either nonexistent or nearly
18 so.

19 We have a real and actual voting
20 discrimination problem as we did in Waller County, the
21 Texas attorney general barely lifted a finger to help us.
22 As it appears to me, the proposed voter ID bill is but an
23 initiative to identify class of voters who may be further
24 disenfranchised by real or perceived additional on-site
25 voting requirements, and a few of these requirements -- at



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1 least from the perspective of those who seek to
2 discriminate against legitimate voters -- is that the
3 voters who are intimidated by photo ID measures are often
4 deterred from even attempting to vote and are subsequently
5 difficult to identify. Hence the question: Who is
6 denied?

7 It is interesting that since the U.S.
8 supreme Court affirmed the right of Prairieview students
9 to vote in Waller County in 1979 there has been a constant
10 erosion of that right. We need the committee members and
11 those House members who are concerned about voting fraud
12 to join those House members like Representative Al Edwards
13 who marched the 7.2 miles in the rain because they truly
14 cared about protecting the integrity of elections in
15 Texas.

16 Fraudulent elections do have consequences.
17 You should know that the Justice Department sued Waller
18 County in 2008 and Waller County admitted that they had in
19 fact violated the civil rights of students at Prairieview,
20 that a \$49.3 million bond construction was passed by the
21 voters in a local school district that includes
22 Prairieview.

23 In that election, that fraudulent election
24 by local government officials, they disenfranchised
25 thousands of Prairieview students. The bond cast by a few



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1 hundred votes and state officials who were now concerned
2 about tainted elections stood silent. \$49.3 million and
3 state officials stood silent though local officials now
4 admit -- those same local officials now admit after the
5 election was over that the election was fraudulent and not
6 pre-cleared. This small school district, which is Waller
7 Independent School District, relied on the voter
8 registration practices of Waller County who admitted that
9 they had in fact disenfranchised Prairieview students.

10 The bond construction measure passed. The
11 one that passed has pitted a white town against a black
12 town. It pitted a white town versus a black town, and of
13 the \$49.3 million that passed through this fraudulent
14 election, 49.1 went to the white town and \$230,000 went to
15 the black town. And House Bill 1, which I guess was
16 passed a couple years, ago allowed that white town -- that
17 white school board to part in a joint election with the
18 one municipality to the full use of a second municipality.

19 So, you can guess why the one white town,
20 Waller, got \$49.1 million in educational construction and
21 we got the 230,000 in Prairieview. They built a
22 17-million-dollar football stadium that they called
23 educational construction, and we got air conditioning in
24 our gymnasium for the first time -- for the first time in
25 54 years. It was the election and we marched and



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1 protested, and I just can't imagine that right now we have
2 such a strong movement in state -- by state officials to
3 make sure that we don't have tainted elections and now we
4 pay the bills for this football stadium, the
5 17 million-dollar football stadium and all the Waller
6 County officials had to do was apologize and say that we
7 were wrong and yet state officials just stay absolutely
8 silent. Tainted elections, disenfranchised students. And
9 even if all the students came with all of the 11 or 12
10 pieces of non-photographic identification, most of them,
11 their driver's licenses would say Houston and Dallas.
12 Most of their deals would be going to their parents. We
13 don't even have rural delivery in Prairieview, Texas. And
14 so, they only have P.O. boxes for the most part.

15 So, you could go down the list and ask how
16 does this affect Prairieview students, and I will tell you
17 that it is a softball that you-all are attempting to throw
18 at Waller County officials. They use this softball to
19 make it easy to cheat, to make it easy to cheat more of
20 these students out of the ballot box. You-all are
21 throwing or proposing to throw a softball to Waller County
22 officials. (Inaudible) more of these students out of the
23 ballot box. Thank you.

24 Q. (By Representative Bonnen) Let me begin --
25 because I'm a little confused with some of your testimony.



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1 Let me begin by referring to March 11 of 2009, earlier
2 this last month. Senator Ellis had Mr. Bledsoe -- I
3 imagine you know Mr. Bledsoe -- Mr. Bledsoe said, "Well,
4 you know, we have had a number of problems and Attorney
5 General Abbott, you know he assisted the folks in
6 Prairieview when a situation arose where you had a number
7 of people wrongfully purged from the rolls who could not
8 vote in the city election. And he also had, I think,
9 about a thousand ballots. I mean voter registration
10 applications that were just sat on that no one -- just sat
11 on so the folks were not able to vote in the particular
12 election and they were found in the county office and they
13 were --- the attorney general had them filed -- the
14 attorney general had to file them," said by Mr. Bledsoe.

15 Is that -- was Mr. Bled inaccurate?

16 A. I don't know the conversation that he has had.

17 Q. It's a public record that he had testified for
18 Ellis before the state Senate on November 11th of 2009.

19 A. I can tell you that over a thousand voter
20 registration cards were never processed and to this day
21 those cards were never processed in Waller County. It was
22 those thousand cards that allowed that
23 \$49.3 million-dollar bond election pass. And Greg -- I'm
24 going to ask you a question. Greg Abbott, he did hold up
25 the federal lawsuit that we had temporarily for two or



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1 three days. That's why you'll notice that I did say he
2 barely lifted a finger.

3 Q. Well, let's discuss that. I have an attorney
4 general's opinion from February 4th of 2004. I'm from
5 the South of Houston, so I see a lot of this in meetings
6 discussing some of these issues, and I find it interesting
7 that you say barely lifted a finger and the state
8 government hadn't done anything. You're pretty serious
9 about those comments, but eventually this attorney general
10 is the one who wrote the opinion saying that those
11 students who were being denied previously by your county
12 officials the right to vote there. It was General Abbott
13 who wrote the opinion in response to Senator Ellis'
14 question that they could vote there. That's pretty
15 significant.

16 REPRESENTATIVE BONNEN: Well, if you look
17 at the opinion, maybe you may think so. But in '04, he
18 wrote the opinion. In '06 the registration office in
19 Waller County said, "Okay. Just fine."

20 Q. I'm trying to clarify your comments between maybe
21 issues with local officials in Waller County and your
22 claim that the state and the attorney general have done
23 nothing.

24 A. Right. And I'm going to respond to it. In '04
25 he wrote the opinion that those students were entitled to



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1 unfettered access and they were entitled to vote. In '06
2 county officials just flat-out refused to process the
3 cards. We found out that they were seeking criminal
4 charges in '06. Now, he already an opinion saying this is
5 an illegal process or thought it was an illegal process.
6 That was in '06. Not a single person lost their job, was
7 punished, and he assured me that he was going to pass a
8 bill that would provide criminal penalties for election
9 administrators who refused to process cards. That was two
10 years ago. I don't see that there's been any legislation
11 presented --

12 Q. Now, didn't the Waller County DA apologize and
13 resign at that point?

14 A. The Waller County DA did apologize.

15 Q. Didn't he step down?

16 A. Not because of that. Not because of that.

17 Q. Why did he step down?

18 A. He claimed it was because of health issues.

19 Q. Oh, okay. So, when football coaches resign after
20 bad seasons, it's because they are tired of coaching
21 there?

22 REPRESENTATIVE BONNEN: The one thing that
23 I will say is that after he stepped down, a thousand
24 students were still disenfranchised. So, apparently
25 whatever took place at the state and at the local level,



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1 it did nothing to eradicate that impediment.

2 Q. What got the Department of Justice involved? Was
3 it the referral from the attorney general's office?

4 A. New first contacted the justice department and
5 had been dealing with the Justice Department many months
6 before Greg Abbott got involved. In fact, Greg Abbott got
7 involved when I was walking to Austin to protest the fact
8 that he refused to prosecute anybody for withholding those
9 ballots. I remember that.

10 Q. You had to march on off, then, and sit out in
11 front of the attorney general's office until he had a
12 meeting, correct?

13 A. That's not exactly what I said.

14 Q. What did you say?

15 A. I said when I called and he refused to meet with
16 me --

17 Q. Did you actually make a phone call and they
18 refused to meet with you?

19 A. He refused to meet with me until I was 10 miles
20 on the other side of Prairievew and he got a phone call.

21 Q. So, you called his scheduling office and they
22 refused to meet with you?

23 A. As I recall, they did.

24 Q. As you recall?

25 A. Let me say this. When I was 10 miles on the



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1 road, he called and then --

2 Q. Did you make a phone call prior to setting out on
3 the road?

4 A. I made many phone calls.

5 Q. And asked for a specific meeting?

6 A. Many phone calls.

7 Q. But did you ask for a specific meeting with the
8 attorney general?

9 A. I said, "I want to speak with Greg Abbott."

10 Q. Did you ask for a specific meeting with the
11 attorney general? My understanding is that as soon as you
12 set out on the road and said that you were going there to
13 demand your meeting, you had a meeting within a day.

14 A. Same day.

15 Q. Even better. So, prior to that did you call to
16 specifically ask for a meeting with the attorney general?

17 A. Oh, absolutely.

18 Q. And you had been told that?

19 A. Absolutely.

20 Q. Okay. That's interesting. You talked about the
21 bonds. Were there monitors in the election, bond election
22 from the State of Texas, Secretary of State's office?

23 A. In the 2007?

24 Q. Correct.

25 A. I believe so, but the students were registered.



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1 They had never processed the cards.

2 Q. I understand that, but were there not state
3 monitors there to watch that election?

4 A. I believe there were.

5 Q. And did that come from the office of attorney
6 general, the state, Secretary of State's office?

7 A. I can't say for sure. Yeah, that's where that
8 probably come from.

9 Q. The state -- Secretary of State's office? I
10 guess I'm concerned with your claims that the state has
11 done nothing. The interesting thing is that you talked
12 about Department Of Justice. That's who has
13 responsibility over these voting rights claims.

14 A. Well, the Department of Justice claimed that they
15 had already pre-cleared House Bill 1 and because they had
16 already pre-cleared House Bill 1, Waller ISD did not need
17 pre-clearance.

18 Q. So, then, the Department of Justice decided that
19 they were in --

20 A. The Department of Justice hadn't been -- they had
21 (inaudible.)

22 Q. Right. I'm trying to understand.

23 A. They weren't on paper.

24 Q. Sure. I'm not saying they were. What I'm simply
25 saying is that that's who has that authority, correct?



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1 You're blaming the attorney general for authority he
2 doesn't have, but did he not refer that case to the
3 Department of Justice?

4 A. We have been in contact with the Department of
5 Justice 15, 20 years regarding these issues. I can't --

6 Q. Did the Department of Justice take up an actual
7 case and go into an investigation, though?

8 A. I can't say -- I can't say for sure. I can't say
9 for sure that it was on Attorney General Greg Abbott's
10 recommendation or --

11 Q. Did it happen around the same time, though?

12 A. They were already investigating. They were being
13 prodded and pushed forward by him. I'm not sure, but that
14 was alleged.

15 Q. What did the Department of Justice find? I want
16 to be clear about that. The Department of Justice, what
17 was their findings?

18 A. With respect to those thousand students?

19 Q. Uh-huh.

20 A. That's when the (inaudible) that was part of the
21 investigation that led to the consent decree, and that was
22 they had changed many processes and he held many elections
23 over the last 25 years that have not been pre-cleared.

24 Q. I understand, but did they find wrongdoing,
25 though? Did they find Voting Act law violation?



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1 A. There was a consent decree in which waller County
2 admitted that they had, in fact --

3 Q. Waller County admitted that?

4 A. Right.

5 Q. Okay. My understanding, though, is that there
6 was not any criminal conduct alleged. Is that true?

7 A. That's pretty much why they jumped at it. In
8 fact, on the very same day the Justice Department --

9 Q. Well, I have the degree here. My understanding,
10 though, is that there wasn't any criminal --

11 A. Let me say this. When the Justice Department
12 issued that consent decree on the same day, when they
13 issued the log on the same degree that decree had already
14 been agreed to. So, I don't know the details of what
15 happened back behind, but we do know that students were
16 disenfranchised and an election was tainted because of
17 Jackson County.

18 Q. I guess the other thing in regards to what the
19 attorney general's office did or did not do for you, in my
20 records I have that the attorney general's office actually
21 held up that election for -- for bonds. The attorney
22 general's office actually held the sale of bonds for I
23 believe four months because there was a question on the
24 election; is that correct?

25 A. No, the election was initially -- the validation



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1 of the bond was held up initially by the Justice
2 Department before we even knew that they had got
3 pre-clearance. Sometime two months after the election,
4 the Justice Department realized that the local officials
5 didn't even have the election pre-cleared.

6 Q. You're the one who held it up? I'm not talking
7 about the election. I'm talking about the selling of the
8 bonds.

9 A. The bond election should not be valid -- the bond
10 could not be validated until the judge -- until the
11 election had been pre-cleared. That was held up initially
12 by the Justice Department.

13 Q. Did they reject the claim at that point?

14 A. No. That's interesting. I'm glad you asked.
15 There was a guy name John Tanner who made an agreement
16 with the local officials -- and this was after a meeting
17 he had with Attorney General Greg Abbott. John Tanner
18 made an agreement with the local officials, and this was
19 after a meeting that he -- I know that you read it. He
20 said, "We want to go ahead and retroactively pre-clear the
21 49.3-million-dollar bond election as long as Waller
22 Independent School District agreed that in the future they
23 will have joint elections with the City of Prairieview."

24 So, Waller called a special board meeting
25 at 8:00 o'clock in the morning in August after the meeting



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1 between Greg Abbott and Justice Department and they agreed
2 that they will have joint elections with the City of
3 Prairieview. They signed this resolution, they sent it
4 overnight to D.C. On Monday morning, people in the
5 Justice Department get it and they agree to pre-clear or
6 retroactively pre-clear the election based on this
7 resolution, okay? So then they released the money at that
8 particular time and Greg Abbott had an opportunity -- but
9 they released the money at that particular time.

10 Then fast forward to 2008. When they fast
11 forward to 2008 and we're in federal court and we're stuck
12 in federal court, we're asking for Mr. Abbott's office to
13 intercede and help us --

14 Q. Explain to me how they would intercede in federal
15 court. They don't have jurisdiction in that court.

16 A. No. I suspect that maybe they could get
17 involved. I'm not an attorney, but I suspect they could
18 get involved and say, "Well, hold up. There was an
19 agreement" --

20 Q. I've just discussed several situations where they
21 have involved themselves where they have the authority as
22 the attorney general of the State of Texas.

23 A. All I'm saying, we were in federal court. Waller
24 ISD then, once the money was released -- a week after the
25 money was released and made available, then they went back



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1 and said, "Well, we see that House Bill 1 allows us to
2 only go with one city," they go back to saying, well,
3 we're no longer going to have joint elections with the
4 City of Prairieview. At some point the attorney general's
5 office could have gotten involved and said, "Hey, you guys
6 had an agreement."

7 Q. Well, I'm confused. I thought a few seconds ago
8 you were telling me the attorney general's office -- was
9 involved.

10 A. They were involved, but everybody who was
11 involved was not involved to help you. They were
12 involved.

13 Q. What I don't understand, you're going back and
14 forth through whether they were or were not involved.

15 A. No, no. I told you from the very beginning, they
16 did little to help us. Does that not imply that they
17 were, in fact, involved?

18 Q. I'm amazed that you said they did little to help
19 you when they wrote an opinion of holding the right of
20 those students to vote in Prairieview, something that the
21 local officials were flatly denying. They held off on the
22 sale of the bonds. They were declined -- declined the
23 improvement through the bonds, and another thing is that
24 the scheduling office has no record of your request to
25 meet with the attorney general.



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1 A. I'm not in charge of their office.

2 Q. I didn't ask you whether you were in charge of
3 the office. You're sitting here under oath and telling me
4 that you made a request to the scheduling office of the
5 attorney general?

6 A. I called the attorney general's office. Now, if
7 I need to clarify myself, I don't know if I was speaking
8 to the scheduling office or not. I know that their
9 response was once I was on the road was, "Okay. He will
10 meet with you now."

11 Q. Well, I want to be clear, though. I think it's
12 pretty important when you made a request to meet with the
13 attorney general.

14 A. Right.

15 Q. When did you make that request? After you made a
16 press statement saying you were marching on Austin, or did
17 you make a phone call --

18 A. No, I didn't. I made phone calls. Monday
19 morning at, like, 8:05 in the morning. I was waiting for
20 them to come into the office. In fact, I can be more
21 specific about it because I told my wife that morning,
22 "I'm going to call the attorney general's office and if he
23 doesn't agree to meet with me, I'll just walk down there.
24 I'll just stay there until he meets with me."

25 Q. So, what you're -- so, let me piece this



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1 together. What you're basically telling me is you woke up
2 Monday morning and decided you wanted to meet with the
3 attorney general and made a phone call at 8:05 -- and did
4 you get somebody or no?

5 A. In the context of it, that was when I made a
6 decision that I would walk. But for months before I had
7 been in contact with the attorney's general office about
8 the issue.

9 Q. Had you requested a face-to-face meeting with the
10 attorney general over that time?

11 A. I'm not so sure that I had.

12 Q. That's your answer.

13 REPRESENTATIVE BONNEN: Thank you. I rest.

14 Q. (By Alma Allen) Mr. Charleston, I feel your
15 passion, and I feel you're very passionate about this
16 issue and take it very, very seriously.

17 Did Congresswoman Sheila Jackson Lee assist
18 you in connecting you with the Justice Department in
19 question, do you think?

20 A. Absolutely. She made a request of the -- I think
21 it was in the general to get involved in the Waller ISD
22 case, and she was a witness from the very beginning. In
23 fact, it was in 2004 when she initially wrote the attorney
24 general and requested an investigation, and she's the one
25 who really got the Justice Department involved from --



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1 certainly from 2004 on forward.

2 Q. So, you had help not only from your local or your
3 Houston reps, but you had help from (inaudible)?

4 A. Twice he marched with us, in 2004 and also in
5 2008. 2008.

6 Q. And how long had this been going on with
7 discriminated of the students at Prairieview A&M?

8 A. The initial began with a guy named Chuck Ballard.
9 In 1972, Chuck Ballard was a white student enrolled --
10 (inaudible) in the first lawsuit and Craig Washington was
11 one of his attorneys. He filed that and for seven
12 years -- he fought it all the way to the U.S. Supreme
13 Court. The Supreme Court affirmed it in 1979 and Chuck
14 Ballard (inaudible) and everybody knows the story of Chuck
15 Ballard and that it's been going on for better than 35
16 years.

17 Q. Do you know the bill (inaudible) to spend
18 millions, millions of dollars to implement voter ID.

19 Based on your prior happenings at
20 Prairieview, based on records, do you personally have the
21 confidence that the state would invest in necessary
22 resources to educate voters and train election workers in
23 the 254 counties and over 8,000 precincts to provide
24 adequate access to require IP documents if necessary to
25 make such a law not disenfranchise voters?



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1 A. Well, one of the problems that Waller County
2 constantly told us as they sought to eliminate the --
3 spring (inaudible) they sought to eliminate all early
4 polling sites. In a county that's 525 square miles, they
5 were going to have only one early polling site, and they
6 said they could not afford a 3,000-dollar voting machine.
7 And so, they had to begin to consolidate. The money was
8 so tight. Another time they talked about the reason that
9 they couldn't use the hundreds of thousands of the
10 (inaudible) was because we had a new freshman class in and
11 they did not have the labor necessary to process these
12 cards. And most recently they said they did not have the
13 labor to staff all the polling sites.

14 So, you start creating more and more
15 confusion, more and more requirements even if -- I think
16 that Waller County, being a small county with a minimal
17 budget they are going to be more empowered to say that
18 they cannot afford to do these things unfunded mandate.

19 Q. That's what you think if this bill is
20 implemented?

21 A. Absolutely. I think it's a step in the wrong
22 direction, certainly for Waller County. We went from
23 having 600 students in the campus precinct vote in the
24 November general election to 3200 that voted in 2008,
25 three weeks after the Justice Department got involved.



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1 But I think this is definitely the wrong direction because
2 we made some tremendous headway in working with the county
3 administration, county elections office and to now throw
4 that says, okay, bring a bill or bring something from a
5 government agency when they know locally that Prairieview
6 is the only city in the whole county that does not have a
7 mail delivery to their homes, and it's the most popular
8 city in the county. So, students get very little, if
9 anything, mailed to them at a Prairieview address and they
10 can present 10 forms of ID with their names on it and all
11 of it would lead to the preponderance of the evidence that
12 they are not residents of Waller County because everything
13 would say -- have their parents' address. That's the
14 different piece of evidence that I've seen only.

15 REPRESENTATIVE BONNEN: Thank you.

16 Q. (By Chairman Smith) Let me just say that I
17 completely understand why you might be very sensitive to a
18 very suspicious -- any changes of any kind in voting laws
19 because of the fact that there is a history in this
20 country of things occurring that are unacceptable and that
21 resulted in the passage of the Voting Rights Act, which
22 was a piece of legislation that was needed, unfortunately,
23 and as a result of that legislation, anything that this
24 state does -- and those, you know -- you know, anything
25 that this state does has got to be pre-cleared by either



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1 the federal courts or by what would now be the Obama
2 Justice Department.

3 Are you -- do you -- do you have a reason
4 to be concerned about that pre-clearance process that you
5 might not get a fair shake in terms of being protected
6 against any inappropriate practices as a result of this
7 legislation having to be reviewed by and approved by
8 either the Obama Justice Department or our federal court
9 system in Washington, D.C.?

10 A. Well, obviously I have a degree of confidence in
11 the Justice Department now that they would pre-clear it,
12 but we're not going to just roll over because we have a
13 new administrative in. When we filed a lawsuit, we found
14 out that Waller independent School District -- the State
15 of Texas got Waller into this pre-clearance requirement in
16 the early Seventies. It was Waller County that involved
17 Texas. Texas wasn't initially a part of it. It was
18 because of Waller County. And so, Waller County -- the
19 whole State of Texas got in in part due to Waller County
20 and after they brought them in in 1976, Waller County
21 refused to have -- for 17 years even ask for pre-clearance
22 and nobody questioned them. For 17 years they passed
23 bonds and built schools and built them all in Harris
24 County, built them all in Waller and didn't even ask.

25 So, we are -- like you said, I appreciate



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1 your acknowledgement and understanding that we are all
2 suspects because all of our tax dollars and all of our
3 infrastructure dollars went other places. And then we get
4 mad and we decide to stand up, we still lose the issue
5 because of House Bill 1 that says that nobody -- because
6 of House Bill 1 that says that you only have to choose one
7 state to have joint elections with and the Justice
8 Department says their hands are tied. Nobody in the state
9 legislation -- they don't want to get involved, but they
10 had joint elections with one city and we're not going to
11 have it with Prairieview and we lost out.

12 Q. I understand why some people might have been
13 concerned or suspicious arguably from your perspective of
14 the political appointees in the Bush Justice Department.
15 There was some questions there. But now, given the fact
16 that the choice is between the Obama Justice Department
17 and the Washington, D.C. Court of Appeals -- I'm not
18 saying that if you disagree with legislation because of
19 that protection you should just vote yes, but do you -- do
20 you -- are you not comforted that that process will
21 protect any legitimate consequence upon voting rights?

22 A. When we as a group of individuals -- Mayor mare
23 Jackson, his children, when we file a lawsuit, we filed a
24 lawsuit, had two court -- two individual attorneys that
25 took our cases. Waller Independent School District spent



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1 better than \$1.3 million with Vinson & Elkins to fight us
2 all of the way in order to deal with that.

3 We went all the way to putting every --
4 every court, every level in the State of Texas, went
5 before seven Republican judges, and to this day have never
6 had an opportunity to present our case in court.

7 So, on the one hand we feel confident with
8 the Justice Department, but the other question is how much
9 is it going to cost us? Right now I have a hundred
10 thousand dollars over my head in judgments in attorneys'
11 fees and I'm okay with that, but how much is it going to
12 cost us to get to the Justice Department? How much is it
13 going to cost us, and who can afford to continue filing
14 federal lawsuits if you know that you can't even get
15 justice at the local level because of politics and things
16 like that. You have legislation that -- regarding
17 pre-cleared, and no one corrected it.

18 So, I mean, we're rightfully, I believe,
19 skeptical and don't know that we can ever make it all the
20 way to the Justice Department without some major damage.

21 Q. Justin Leavitt with the Brennan Center for
22 Justice at the New York University School of Law agreed
23 that there's not any study of any kind that would -- at
24 least he's not aware of any -- that would suggest that the
25 change we're talking about in Texas where there is a small



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1 change in the current identification requirements would in
2 any way suppress any kind of voter turnout.

3 Are you aware of any studies that he was
4 not aware of that would suggest that this small change --
5 not Vermont versus Indiana, but the little change that the
6 Senate is proposing here in Texas would, in fact, suppress
7 any voter turnout?

8 A. I think with respect to Waller County, it would.
9 Because, for one, they are already struggling right now
10 with just getting 5,000 students registered to vote
11 because of the residency requirements and the other
12 rulings. They are already struggling right now. If they
13 are struggling right now -- and Greg Abbott made a ruling
14 in 2005 -- the Supreme Court made a ruling in '79, it has
15 gotten progressively worse and it has. If you pass
16 another law that imposes even slight changes, that
17 suggests to me that it's certainly not going to get any
18 better.

19 Q. Would the concern that you have apply to any
20 college student at any college regardless of their race
21 and economic background?

22 A. I think it's a very real concern for every
23 college student. I went to William & Mary, and they were
24 having the same problem with William & Mary -- and I think
25 it's Williamsburg -- and that was a virtually all-white



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1 campus and they were having the very same problems. It
2 probably is certainly hurtful to college students. But
3 when you go into a small county like Waller County, it
4 becomes much more exaggerated against predominantly
5 African Americans that represent 25 percent of the voting
6 base.

7 CHAIRMAN SMITH: Okay. Representative
8 Bonnen?

9 Q. (By Representative Bonnen) I appreciate what you
10 just said there. I don't know if you meant it or not, but
11 you made the comment about some general -- making the
12 decision in 2004. One of the things I wanted to ask you
13 is you said the comment about the general since '76.
14 Roughly. Right? Did you say that?

15 A. -- opinion in '04. I didn't say that.

16 Q. Well, you said when the general agreed that those
17 students should be allowed to vote.

18 A. I made the comment that in '04 he made a ruling
19 and the Supreme Court affirmed the decision in '79 and it
20 had gotten progressively worse. That's what I said.

21 Q. Because of his ruling?

22 A. No. I said --

23 Q. Due to your local politics. Right? Not because
24 of the attorney general's ruling.

25 A. What it suggests to me is that if he made a



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1 ruling in '04, the very next election when he saw
2 something going wrong, then there should be been some
3 teeth behind that decision and they do have some law
4 enforcement authority.

5 Q. Well, they do and you have to find criminal
6 action to have -- for them to have that authority, and my
7 understanding is the Department of Justice themselves
8 found no criminal wrongdoing.

9 A. Well, in 2006 the attorney general -- in 2006 the
10 attorney general's office sat down two or three lawsuit
11 enforcement officials. They were investigating for
12 criminal charges, and the last I heard -- this is '09 --
13 it's still an ongoing criminal investigation.

14 Q. The Department of Justice, in their consent
15 decree, say there was not criminal activities. I don't
16 recall reading that at all.

17 A. Okay.

18 Q. Another thing I wanted to ask you: You're
19 saying, though, that the problem does stem back to 1972.
20 You said that earlier.

21 Are you familiar with who the attorney
22 general for the State of Texas has been since 1972 moving
23 forward? You're laying a lot of this on one attorney
24 general, but we've had multiple attorney generals since
25 then. You realize that one of them was Mark White?



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1 A. Correct.

2 Q. He became the governor of Texas. Did he do
3 anything?

4 A. I'm not sure.

5 Q. You know, prior to Mark White was John Hill, a
6 highly-regarded, recognized statewide Democratic official
7 and Jim Maddox, a good man who passed away last year. He
8 was the attorney general from '82 to '90.

9 Was he involved?

10 A. I'm not here to say that it's a Republican versus
11 Democrat thing. I believe in Waller County it's a racial
12 issue.

13 Q. I'm not certain, though, because you keep saying
14 this specific attorney general, General Abbott, who in my
15 view -- maybe I'm totally wrong in this -- is within the
16 limits of his authority in the law has tried to be
17 beneficial. I mean, I'm baffled, quite candidly. I
18 respect maybe the challenge on a local level. I respect
19 the other challenge there. I'm baffled that you would
20 blame the attorney general -- if I'm putting words in your
21 mouth, stop me -- for making a ruling that those students
22 should be allowed to vote in Prairieview only made it
23 worse and that that's bad. I mean, that's amazing to me.
24 I would think that that's a local problem but that the man
25 on the state level made a great ruling and a very positive



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1 ruling for you.

2 A. I'm not so -- I'm not saying that his ruling is
3 what made it bad. I'm saying he barely lifted a finger.

4 Q. That's a stunning comment to me.

5 A. If you went and looked at that gym at 54 years
6 old -- if you went and saw the gym and you say, "Well, how
7 can attorney general sit back when the county says we
8 violated their civil rights?"

9 Q. Who deals with that is the Department of Justice.

10 A. -- ongoing criminal investigation.

11 CHAIRMAN SMITH: At this point, gentlemen,
12 I'm just going to indicate on the record that the time
13 allotted for questions has expired and my general
14 impression was the extent to which we go beyond this will
15 be the extent to which we go past midnight, but I will
16 allow questions of Mr. Raymond after Mr. Bonnen if that's
17 what people desire.

18 Q. (By Representative Bonnen) Let me just, again,
19 back up, to Mr. Bledsoe, who I believe is a significant
20 leader in the NAACP said that all General Abbott. I mean,
21 I'm just -- I think there may be some confusion about what
22 his powers are and what the abilities that his office
23 provides him, but we've probably exhausted it at this
24 point.

25 CHAIRMAN SMITH: Any other members of the



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1 committee before I go to non-committee members? I'm going
2 to exercise my discretion to allow a few questions of
3 non-committee members. Representative Raymond, we're not
4 going to announce when the time is up and ask the members
5 to -- it is up and ask the members to please, please --
6 I'm not going to prevent additional questions, but I am
7 going to ask people to take into consideration the fact
8 that we're going to be here very late if after we get to
9 that point they don't take that into consideration.
10 Representative Raymond?

11 Q. (By Representative Raymond) I won't be very long,
12 Mr. Chairman. With all respect to my friend, Mr. Bonnen,
13 my point of view is a little different.

14 Mr. Abbott -- I've sat here in many
15 meetings with Mr. Abbott and seen him do everything he
16 could to suppress and violate the voting rights of the
17 minorities in the state before when we dealt with
18 redistricting. So, I've seen it up close and personal.
19 And as far as, you know, saying he was your friend and
20 trying to help you, you know, when something cuts off five
21 fingers here and leaves -- cuts off three and leaves you
22 two, well, they're being a friend to the two fingers if
23 you cut off the other eight first. I think that's what
24 we've got with Mr. Abbott. By the way, Mr. Hill was a
25 Republican a lot longer than he was a Democrat.



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1 Are you familiar with -- excuse me? In any
2 event, Judge, are you familiar with -- you've heard a
3 little bit probably about the Indiana case?

4 A. Yes.

5 Q. Well, did you know that the federal appellate
6 judge who upheld the Indiana photo ID law said -- this
7 contradicts a little bit whatever you expert cited, Mr.
8 Chairman -- and I quote, "No doubt most people who don't
9 have photo IDs are low on the economic ladder and, thus,
10 if they do vote are more likely to vote for Democratic
11 than Republican candidates. Thus, the new law injures the
12 Democratic party by compelling the party to devote
13 resources to getting to the polls those of its supporters
14 who would otherwise be discouraged by the new law of
15 bothering to vote."

16 Do you know if the federal judge -- I mean,
17 that's pretty interesting to me that a federal judge would
18 put that in writing in terms of who this law hurts.

19 Are you aware that the AARP, the League of
20 Women Voters, common Cause, NAACP, Lulac and others have
21 testified in opposition to voter ID?

22 A. A little bit familiar.

23 Q. You're familiar that they opposed it? Do you
24 think all these groups are opposing it because they are --
25 and then that the people who were pushing for this because



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1 they want help minorities and folks on the lower end of
2 the economic scale?

3 A. I believe they do.

4 Q. You think they want to help them?

5 A. Yes, I do.

6 Q. You think they are going to help them with this?

7 A. No, I'm talking about those who are opposing this
8 bill, particularly those who are helping minority groups
9 and people on lower income.

10 Q. So, if they are opposing it, do you think maybe
11 they are doing it because they are convinced as this
12 federal judge from up North --

13 A. Absolutely.

14 Q. -- was convinced that it would affect minorities,
15 lower income?

16 A. Absolutely.

17 Q. All right. Let me just ask you because it's very
18 frustrating for me and the chairman is my friend and we've
19 worked on things together and I appreciate him giving me a
20 chance as a non-member of this committee to ask a couple
21 of questions, but I told the chairman the other day that
22 believe it or not my two grandmothers, they didn't have
23 photo IDs. When I told him, he was surprised to know
24 that, I guess, my two grandmothers wouldn't have photo ID.
25 They are both Hispanic, they both live out in a rural



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1 community, and that was a fact. And the fact is there are
2 a lot of folks in Laredo, which is not a rural community
3 that I represent now, a lot of people in the rural
4 community that I used to represent -- I represented seven
5 rural counties, 25 little towns, that would be adversely
6 affected by this kind of law.

7 So, I, you know -- and I want to -- I'm
8 listening to Mr. Bonnen going on about -- I guess he wants
9 you to say that Mr. Abbott is our champion of minorities,
10 but, you know, with all respect, it's hard -- it's hard
11 for us to ever accept that because we know better in the
12 actions that he has taken in the past.

13 You know, what do you think is going on?
14 What is your perspective about why they are pushing this
15 voter ID bill so hard?

16 A. I'm just a lay person, but my thing is I know in
17 Waller County that any time they are throwing a softball
18 like this, they are going to use it and they're going to
19 choke -- choke the students at Prairieview. And I suspect
20 that it happens in rural counties even more so, people who
21 don't have the means and wherewithal to get media
22 attention and other things. But they are going to
23 election workers who come in very temporary, volunteer
24 workers or 7-dollar an hour workers to come in and
25 actually determine that this -- this bill that came to



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1 this particular address, which really means nothing, and
2 give them the discretion. And the more discretion that is
3 given to these poll workers, the more partisan it's going
4 to be.

5 Q. So, you think that maybe -- and I've mentioned
6 this to the chairman, but maybe they can put into this
7 bill that if there were provisions that said if you are an
8 election judge and you prevent somebody from voting, you
9 know, it ought to be a felony. Let's protect the voter
10 because voters get turned -- I'll tell you what. What we
11 have seen is that voters get turned away a lot more and
12 the law is broken in that way a lot more than somebody
13 going in impersonating you or me or Mr. Bonnen or the
14 chairman and trying to say, "Oh, I'm James Bonnen and I
15 want to vote here." You know, that's -- what we have seen
16 is that doesn't happen, but what does happen is --
17 everywhere -- is that you have election judges that turn
18 people away.

19 Do you think it would be a good idea if
20 they were so committed to making this a better system that
21 they would put something in there that says if you turn
22 somebody away and we prove that, it's a felony?

23 A. Absolutely. When we filed the affidavit and
24 complaint for criminal charges -- seeking criminal charges
25 against Waller County officials, the county commissioner's



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1 court went into closed session, abolished the elections
2 office rather than fire the three young ladies who were
3 working in the elections office. Those people were -- the
4 office was abolished, they got severance pay, and all we
5 know is that they went into closed session and something
6 occurred so bad regarding those 1,000 voter registration
7 applications that they saw fit to abolish the elections
8 office. And you combine that with the county saying, "We
9 admit that we disenfranchised students" with three people
10 who were let go of their jobs and will all the resources
11 of Texas Attorney General, they couldn't find a single
12 criminal offense?

13 Q. What's going to happen if this passes and Waller
14 County and the other 253 counties -- I just want to get
15 your opinion based on your experience -- you can go to
16 vote and they look at your ID and say, "No, that looks --
17 you don't look like this picture and you can't vote"?
18 What does this bill do to that judge that said, "No, you
19 can't vote because you don't look like that picture"?

20 A. Right. It gives them the discretion to -- one,
21 it proves his case -- I can only speak to that. It gives
22 them the discretion to say, "Get over in this line, vote
23 provisional, and then you back this line up. And, of
24 course, Prairieview students and college students don't
25 have the right to miss class. They can't go back to the



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1 teacher and say, "Well, I was voting," like an employee
2 can do and going back to his employer saying, "I was
3 voting." They can call it a five or six hour wait like
4 they typically try to do, cause a five- or six-hour wait.

5 Q. I'm sure that won't discourage voters.

6 A. It will discourage voters, and we have a problem
7 because we know that hundreds of students turn away when
8 they know they have to go to a job, they've got to catch a
9 ride with somebody to go to a job, they have to go back to
10 class, they have to go eat because they're on a meal plan
11 that they've already paid.

12 So, when we see them all going away, then
13 people come back and say, "Well, who was disenfranchised
14 because of the long lines and the fact they only had one
15 voting machine and they didn't have the resources?" Well,
16 we can't really prove it because all we saw was them
17 walking away. I believe that the purpose of this bill
18 will be to discourage those people from staying at the
19 polls and even going to the polls to begin with.

20 Q. The last thing I want to ask you about, you told
21 Mr. Bonnen -- you were talking about -- who was it that
22 resigned because -- for health reasons or whatever?

23 A. Oliver Kingsley.

24 Q. And who was -- remind me of who --

25 A. He was the criminal district attorney in 2004 who



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1 threatened criminal prosecution for attempting to register
2 and vote in Waller County.

3 Q. Okay. So, the penalty was you just deny it, and
4 it'll be okay. We'll let you walk away. That's the
5 system that's set up now.

6 A. No criminal charges ever in Waller County.

7 Q. But he resigned and walked away. So, he's okay.
8 Do you know what it reminds me of? It reminds me of when
9 Haliburton was first found out that they were cheating for
10 millions of dollars, charging for gasoline that they
11 weren't selling and President Bush had a press conference
12 and said, "Let me tell you something. If I find out this
13 is true, they're going to have to give every bit of that
14 money back." I'm thinking, "Man, it it's one of my guys
15 from south Texas" -- you know, you go steal a thousand
16 dollars from the federal government, you're going to
17 prison. It's a different standard.

18 A. That's right.

19 Q. I appreciate you being here, and I want to ask
20 you -- you may not want to stick around much longer
21 because, with all respect, I've heard him ask you about a
22 hundred times -- he wants you to think Greg Abbott is
23 great and it's like he's trying to twist you up and I
24 expect him to say (inaudible) how much bubbles are in it?

25 REPRESENTATIVE BONNEN: With all due



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1 respect, I'm simply trying to get some facts on the
2 record. I know that bothers you at times.

3 REPRESENTATIVE RAYMOND: What you're trying
4 to do is you're trying to defend something (inaudible.

5 (Simultaneous conversation)

6 REPRESENTATIVE BONNEN: Mr. Raymond, I'm
7 simply quoting from Mr. Bledsoe on March 11 of 2009 --

8 REPRESENTATIVE RAYMOND: -- out of context.

9 REPRESENTATIVE BONNEN: We'll let you
10 know -- all Frank Attorney General Abbott. That's what I
11 was reading, Mr. Raymond.

12 REPRESENTATIVE RAYMOND: Thank you for
13 cutting off eight fingers and leaving three.

14 REPRESENTATIVE BONNEN: We're actually
15 having a pretty civil discussion.

16 REPRESENTATIVE RAYMOND: Let me tell you
17 where I get worked up. This is a systematic effort to try
18 to disenfranchise blacks and browns and people who are
19 poor. If this was an effort to disenfranchise, you know,
20 white folks that weren't poor and that tended to vote
21 Republican, you'd be raising hell, too.

22 REPRESENTATIVE BONNEN: I've seen the
23 numbers from the State of Indiana and the State of
24 Georgia.

25 CHAIRMAN SMITH: Let me interrupt,



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1 gentlemen, please. Please, please. The --

2 SPEAKER: Mr. Chairman, I wanted to ask him
3 a couple questions.

4 CHAIRMAN SMITH: Okay. First of all, I
5 would just like to make a quick and civilized comment, if
6 possible. Not that these weren't civilized, but I want to
7 maintain decorum -- the proper decorum at this hearing if
8 we possibly can on both sides.

9 The -- I want to emphasize that I agree,
10 first of all, with your concerns about the Senate bill in
11 terms of part-time workers making decisions about whether
12 you look enough like your picture to be able to cast a
13 vote, okay? I agree with that.

14 I want to emphasize, however, that the
15 photo identification requirements that are currently in
16 law do not change at all in this legislation. So, to the
17 extent that your granddaddy didn't have a photo ID,
18 there's no change in current law with regard to photo
19 identification in this legislation. All that's being
20 changed is the provisions regarding non-photo
21 identification to require two forms rather than one.

22 You currently have the right to vote with a
23 photo identification, and then this law you'll still have
24 the right to vote with a photo identification. The only
25 change is with regard to non-photo identification. And



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1 insofar as Chief Justice Stephen -- I don't know if that's
2 where the quote that Representative Raymond was referring
3 to came from, but he is one of the more liberal of
4 justices on the Supreme Court who wrote the majority
5 opinion.

6 SPEAKER: Mr. Chairman, just so you'll
7 know, it was a federal judge from Indiana who upheld the
8 opinion.

9 CHAIRMAN SMITH: District court or Court of
10 Appeals?

11 SPEAKER: Court of appeals. But it was a
12 judge that upheld the opinion.

13 CHAIRMAN SMITH: Justice Stephens who wrote
14 the majority opinion on the Supreme Court indicated in his
15 words on Page 15 that the inconvenience -- he was talking
16 about Indiana, which requires a photo ID, not Texas, which
17 the Senate bill would not.

18 He said, relating to the bill that did
19 require a photo ID, "The inconvenience of making a trip to
20 the Bureau of Motor Vehicles, gathering the required
21 documents, and posing for a photograph surely does not
22 qualify as a substantial burden on the right to vote or
23 even represent a significant increase over the usual
24 burdens of voting."

25 If that is one of the liberal justice's



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1 opinions with regard to the Indiana law which does require
2 a photo identification, I presume that that opinion is
3 even more so with regard to a Texas law that simply alters
4 the requirements for casting a non- -- for providing
5 non-photo identification.

6 That's all the Senate bill would do. And
7 so, a lot of the rhetoric and so forth about a law that is
8 not even before us is really academic.

9 Yes, representative?

10 SPEAKER: While we're on Abbott, I wanted
11 to ask you a couple questions.

12 Q. (By Speaker) What type of -- because there were
13 allegations that there was students there, there were
14 citizens there, African-American citizens that were denied
15 their suffrage, denied their right to vote.

16 What sort of evidence or what sort of
17 refunds and resources did the state attorney general's
18 office to come into Waller County to help that situation?

19 A. One, they gave us no resources. In fact, even
20 with the information I had to FedEx them I had to pay for
21 it out of my pocket and they were trying to investigate --
22 they sent on two or three different occasions criminal
23 investigators down. I constantly made suggestions that if
24 you-all will just come set up in the MSC, the student
25 center, you could come set up and then you could just pull



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1 people over and say, "Were you denied the right to vote?
2 Were you turned away?" I told them that they could run an
3 ad in the newspaper and ask the question "Were you turned
4 away?" because it's very difficult to find seven or 800
5 students who were denied the right to vote.

6 They didn't advertise. They didn't set up
7 any tables. They didn't do any phone calls, to my
8 knowledge. Maybe they did from the offices, but I don't
9 know. We had copies of all of the applications that were
10 turned in. And so, they had the ability to -- to vote for
11 all those applications. We turned over seven or 800
12 applications in that were never processed. And for five
13 months later not processed until the day that I was
14 walking with copies of these applications that would
15 appear in the Houston Chronicle and then the very next day
16 county officials admitted that they, in fact, did have
17 those applications.

18 In fact, when I asked the attorney's
19 general's office where were the applications found, they
20 were found in the district attorney's office. They were
21 found in the district attorney's office and still no
22 prosecution, no nothing.

23 Q. So, you had numerous African-American students --
24 predominantly African-American students because
25 Prairieview is a campus that is predominantly black?



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1 A. Right.

2 Q. So, you had allegations from a wide -- a large
3 number of people that attended school at Prairieview
4 University that lived in Waller County.

5 Now, are you aware that over the last
6 several years that the attorney general was investigating
7 people for mail and ballot fraud? Are you aware that most
8 of those allegations of mail and ballot fraud was usually
9 just, you know, from what we can see, like one person
10 making an allegation at times? Are you aware that most of
11 the people, with the exception of one -- everybody that
12 was accused of it and everybody that was investigated was
13 minority, either black or brown?

14 A. Absolutely. In fact, the representative here was
15 asking me about that. I didn't know about what was going
16 on in Fort Worth and the federal case that took place in
17 March until I got a call from the AG's office asking if I
18 could do Greg Abbott a favor, and that favor was they
19 wanted me to provide testimony on -- about what Greg
20 Abbott had done for the students at Prairieview.

21 And it was then that I got involved and was
22 able to go and say, "Hold up. I didn't know all of that
23 was going on. Now I see what I was being used for,"
24 because they wanted me to provide some character testimony
25 at a case up in Marshall when I didn't know what was going



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1 on and I refused to provide that testimony. And so, now,
2 as I said, I understand how I was trying to be played. I
3 understand that now.

4 Q. How were you being played? I'm confused.

5 A. Because they thought that because of their
6 holding up a bond temporarily, they thought because of
7 their intervening and sending a couple of investigators
8 out that I would be beholden to them and provide testimony
9 about what a great job he had done for us.

10 Q. What authority did the attorney general's office
11 beyond sending investigators?

12 A. I don't know. I'm not --

13 Q. Did the Department of Justice, who has the
14 significant amount of authority and dollars and ability to
15 investigate this, did they file or find any criminal
16 actions?

17 A. There were no criminal --

18 Q. And in my county -- let me just clarify, too,
19 that in my county that no one found any criminal
20 allegations. These were just allegations that were made
21 by one person. Let me finish my line of questions, and
22 I'll be more than happy to let you jump back in. But
23 these were allegations that were made and they were
24 investigated -- investigators were sent out, people were
25 questioned because I know that these folks in my district



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1 felt like they were violated. They felt like that -- I
2 know one lady who is still not (inaudible) the day because
3 it was such a traumatic experience for her that, you know,
4 they were never the same after this and they felt like
5 their -- their reputation in the community had been
6 tarnished.

7 So, I'm asking you in Waller County did the
8 attorney general go after the citizens that were
9 discriminated against and make those other folks on the
10 other side of town feel like they made folks on my side of
11 town?

12 A. I'm glad you asked the question. The first level
13 of criminal complaints of AG's office -- the AG's office
14 came around, they sealed the offices -- they assured me
15 the office was sealed -- and put tape on the door. They
16 sealed the office. And then five months later, even
17 though they had come in and got copies of everything and
18 said that they couldn't find anything -- five months after
19 they sealed the office and investigated, the copies were
20 found in the very building that had been sealed by the
21 attorney general's office and those girls had already
22 resigned and everything was -- nobody faced any criminal
23 charges and there didn't seem to be any real criminal
24 prosecution or effort to prosecute those who later
25 admitted they had, in fact, disenfranchised those



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1 students.

2 Q. Now, let me ask you a question --

3 CHAIRMAN SMITH: I'm going to give you a
4 chance. I just want to make sure you understand that we
5 have seven witnesses left and two of them are with the
6 NAACP. One of them is with AARP. These people are going
7 to be very late if we don't try to -- we're 20 minutes
8 over. I'll take that into consideration.

9 Q. (By Speaker) I promise I only have one more
10 question because I think this is important because you
11 understand and the students that you have worked with
12 understand -- we're not talking about something that
13 happened in 1950 or '60 something that today people are so
14 dismissive of.

15 A. That's right.

16 Q. The students that you represent know what it's
17 like to be discriminated today.

18 A. Absolutely.

19 Q. So, out of everything that you heard -- and I'm
20 talking about people that are for this legislation, people
21 that are for voter ID bill.

22 Have you heard anything in any of the
23 testimony or any of the comments that have been made by
24 anyone that would indicate to you that these folks are as
25 concerned about the voting rights of African-Americans or



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1 black students as they are concerned about the integrity
2 of the ballot box?

3 A. Absolutely not, and that's one reason I'm here
4 because I can't imagine that so many people are concerned
5 about tainted elections. Tainted elections that knew
6 anything about what was going on in Waller County -- and
7 it didn't just happen in Waller County. But if you can
8 see where \$49.1 million went to a white town and \$230,000
9 went to a black town to air condition a gymnasium that we
10 had been trying to get air conditioning for 54 years, and
11 that was a tainted election. Everything that we alleged
12 proved true. We couldn't get any criminal prosecution,
13 but everything we alleged came true. But now we're left
14 paying a tab to put infrastructure in somebody else's
15 playground. We haven't got the support but for
16 African-American legislation -- not even our own
17 legislation, but African-American legislatures were the
18 only ones who had come to our defense. And this tainted
19 election -- a tainted election, the very county that drug
20 the State of Texas into this pre-clearance requirement,
21 the very county, the whole county that made Texas spend
22 millions of dollars in pre-clearance is still running
23 rolls and we haven't got anybody concerned about tainted
24 elections to come to our defense but for the legislative
25 black population.



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1 CHAIRMAN SMITH: Any other questions,
2 members? Thank you, Mr. Charleston. Appreciate you being
3 here today.

4 (David Mulhausen)

5 CHAIRMAN SMITH: At this time, the chair
6 calls David Mulhausen, who is the senior policy analyst
7 with the Heritage Foundation and, for the record, I will
8 identify you as being a fairly conservative (inaudible).
9 I want to be an equal opportunity accuser in terms of
10 ideological bent.

11 You're here to testify in favor of Senate
12 Bill 362; is that correct?

13 MR. MULHAUSEN: Yes, it is.

14 CHAIRMAN SMITH: Please state your name
15 again and who you represent.

16 MR. MULHAUSEN: My name is David Mulhausen.
17 I am a senior policy analyst in the Center for (inaudible)
18 the Heritage Foundation. I thank Chairman Smith and the
19 rest of the committee for the opportunity to testify
20 today. The views expressed in this testimony are my own
21 and should not be construed as representing any official
22 position of the Heritage Foundation.

23 Last year, the United States Supreme
24 Court's Crawford versus Marion decision ruled that on its
25 face Indiana's photo ID law did not pose an



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1 unconstitutional burden on voters. Associate Justice John
2 Paul Stephens concluded that a state may put into effect
3 even-handed restrictions to protect the integrity and the
4 reliability of the electoral process itself.

5 For those without a government-issued photo
6 ID, Justice Stephens noted that the Indiana Bureau of
7 Motor Vehicles provided free photo identification cards.
8 For those that need to obtain the free photo ID, Justice
9 Stephens commented that the inconvenience of making a trip
10 to the Indiana Bureau of Motor Vehicles, gathering the
11 required documents, and posing for a photograph certainly
12 do not qualify as a substantial burden on the right to
13 vote or even represent a significant increase over the
14 usual hassles of voting.

15 In Texas many voters are already required
16 to present photo identification at the polls. The Help
17 America Vote Act passed by United States Congress in 2002
18 requires all first-time voters who register to vote by
19 mail provide a valid photo identification or other
20 documentation at the polls.

21 For those voting without identification,
22 the Help the America Vote Act requires the states to set
23 provisional balance.

24 I would say that there are several social
25 science studies that indicate voter ID laws do not



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1 disenfranchise voters. The Heritage Foundation office
2 study I co-author with my colleague analyzed the effect of
3 photo identification laws on voter turnout during the 2004
4 election.

5 Our study found that these laws do not have
6 a negative impact as previously suggested. Once
7 statistically significant and negative relationships are
8 found, the effects are so small that there's little policy
9 significance. For example, Foundation -- the Heritage
10 Foundation office found that white surveyed respondents in
11 photo ID states are two one-thousandths of a percent less
12 likely to report voting than white respondents of states
13 that only require voters to state their name.

14 African-American respondents in non-photo
15 ID states are one one-hundredth of a percent less likely
16 to report voting than African-American respondents from
17 states that only require voters to state their name. In
18 other cases, no effect was found.

19 In general, respondents of all races in
20 photo ID states and non-photo ID states are just as likely
21 to report voting compared to respondents in states that
22 only require voters to state their name. African-American
23 respondents in photo ID states are just as likely to
24 report voting similar to respondents in states that only
25 require voters to state their name.



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1 The findings of the Heritage analysis
2 suggests that voter ID laws, such as requiring photo
3 identification have virtually no suppressive effect on
4 voter turnout.

5 Additional research strongly suggests that
6 photo ID laws do not suppress voter turnout. Using
7 Indiana County level data from 2002 to 2006, Professor
8 Jeffrey Miller at the University of Missouri performed a
9 rigorous analysis of the impact of Indiana's photo ID law.
10 Professor Miller analyzed the changes in voter turnout in
11 Indiana counties before and after implementation of the
12 state's photo ID law. Overall, the statewide turnout
13 increased by 2 percentage points. The law had no effect
14 on turnout in counties with higher concentrations of
15 minorities, poor, hourly, or less educated. Furthermore,
16 turnout increased in counties with greater percentage of
17 Democrats than other counties.

18 A 2009 study by Professor Jason Mikoff of
19 the University of Delaware and his colleagues used
20 state-level individual data to analyze national voter
21 turnout in four elections from 2000, 2006. This study is
22 rigorous because they examined the effect of photo ID laws
23 on voter turnout over four elections. Their study
24 controls for the political interests such as
25 self-importing enthusiasm from participating in a



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